

**MIDLAND CITY COUNCIL  
MINUTES  
August 9, 2011**

**REGULAR SESSION**

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:02 a.m., August 9, 2011.

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

Council Members absent: Council Member Jeff Sparks (District 1).

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

**MISCELLANEOUS**

1. The invocation was voiced by Reverend Curtis Benninghoff of First United Pentecostal Church.
2. The Pledge of Allegiance to the Flag was stated.
3. Presentation of special events, organizations, individuals, or periods of time.

Mayor Perry recognized a Boy Scout who was present working on a badge.

**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. There were no requests by citizens to speak.

**CONSENT AGENDA**

Council Member Trost moved to approve Consent Agenda items 5b-7, 9, and 11-15; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

- 5b. Approved the minutes of the regular City Council meeting of July 26, 2011.
- 5c. Approved the minutes of the special City Council meeting of August 2, 2011.
6. Received for information the third quarter 2011 investment report. (Finance)
7. Adopted Resolution No. 2011-177. Caption of said resolution is as follows:

RESOLUTION NO. 2011-177

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF A NEW CREMATORIUM FOR USE AT THE CITY'S ANIMAL SERVICES FACILITY FROM THE SOLE BIDDER, F. C. INDUSTRIES, INCORPORATED, OF KANSAS CITY, MISSOURI, AT A TOTAL COST OF \$49,418.00; AND APPROPRIATING FUNDS THEREFOR. (General Services)

9. Adopted Resolution No. 2011-178. Caption of said resolution is as follows:

RESOLUTION NO. 2011-178

RESOLUTION ALLOCATING \$100,000.00 FOR THE CITY FACILITIES RENOVATION PROJECT (PROJECT 8881); AND THESE FUNDS ARE USED TO REPAIR AND REPLACE VARIOUS CITY FACILITIES. (General Services)

11. Adopted Resolution No. 2011-179. Caption of said resolution is as follows:

RESOLUTION NO. 2011-179

RESOLUTION APPROPRIATING INTEREST EARNED IN THE AMOUNT OF \$205.00 ON THE 2008 JUSTICE ASSISTANCE GRANT FUNDS; THIS GRANT WAS ACQUIRED FOR THE PURCHASE OF NEEDED EQUIPMENT FOR THE MIDLAND POLICE DEPARTMENT. (Police)

12. Adopted Resolution No. 2011-180. Caption of said resolution is as follows:

RESOLUTION NO. 2011-180  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING CERTAIN AMENDMENTS TO THE GENERAL ORDERS OF THE MIDLAND POLICE DEPARTMENT; AND PROVIDING THAT THE CITY COUNCIL IS THE POLICYMAKING AUTHORITY OF THE CITY OF MIDLAND. (Police)

13. Adopted Resolution No. 2011-181. Caption of said resolution is as follows:

RESOLUTION NO. 2011-181  
RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE WITH R.E.S. EARTH AND CABLE, L.L.C., ADDING \$28,300.00 FOR ADDITIONAL WORK TO THE EXISTING CONTRACT FOR THE NORTHWEST TOWER WATER LINE - PHASE 2 PROJECT; AND APPROPRIATING \$28,300.00; THE ORIGINAL CONTRACT WAS FOR \$634,875.34; THIS CHANGE ORDER BRINGS THE TOTAL CONTRACT PRICE TO \$663,175.34. (Utilities)

14. Adopted Resolution No. 2011-182. Caption of said resolution is as follows:

RESOLUTION NO. 2011-182  
RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND HINKLE ENTERPRISES, INCORPORATED, FOR SERVICES TO LOT 1, BLOCK 2, WARFIELD INDUSTRIAL PARK, MIDLAND COUNTY, TEXAS; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; HINKLE ENTERPRISES, INCORPORATED, HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; HINKLE ENTERPRISES, INCORPORATED, SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY. (Utilities)

15. Adopted Resolution No. 2011-183. Caption of said resolution is as follows:

RESOLUTION NO. 2011-183  
RESOLUTION APPROVING THE REDISTRICTING OF THE CITY'S SINGLE-MEMBER COUNCIL DISTRICTS AND ESTABLISHING NEW DISTRICT BOUNDARY LINES BASED ON 2010 CENSUS DATA FOR CITY OF MIDLAND CITY COUNCIL ELECTIONS; DIRECTING THE CITY ATTORNEY AND THE LAW FIRM OF BICKERSTAFF, HEATH, DELGADO, ACOSTA, LLP TO SUBMIT THE ADOPTED PLAN TO THE UNITED STATES DEPARTMENT OF JUSTICE FOR PRECLEARANCE UNDER SECTION 5 OF THE FEDERAL VOTING RIGHTS ACT; AND PROVIDING FOR AN EFFECTIVE DATE. (Legal)

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

- 5a. Consider approving the minutes of the special City Council meeting of July 21, 2011.

Council Member Dufford moved to approve the minutes of the special City Council meeting of July 21, 2011 with the amendment that Mayor Perry arrived late; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

8. Approval of a resolution authorizing the purchase of fire alerting system equipment.

Council Member Trost asked if this item could be put off until the next budget.

Communications Maintenance Radio Technician David Flores noted that this is not something that should wait until the next budget as it cuts down on fire response times. He explained that when a dispatcher takes a call it takes about two minutes to dispatch the fire. The new system would automatically place the call to dispatch fire.

Council Member Trost moved to adopt Resolution No. 2011-184; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said resolution is as follows:

RESOLUTION NO. 2011-184

RESOLUTION APPROVING THE PURCHASE OF FIRE STATION ALERTING SYSTEM EQUIPMENT, TO BE INSTALLED BY CITY PERSONNEL, FROM ZETRON, INCORPORATED, THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$119,576.70; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM. (General Services)

10. Consider amendments to the City of Midland Personnel Policies.

Council Member Trost asked for clarification on whether this was a significant change or just cleaning out old policies.

City Manager Sharp noted that this was primarily housekeeping and cleaning up policies. City Attorney Stretcher confirmed that they had reviewed the items and there were no significant changes.

Council Member Trost moved to adopt Resolution No. 2011-185; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said resolution is as follows:

RESOLUTION NO. 2011-185

RESOLUTION AMENDING CHAPTER I, "PURPOSE", CHAPTER IV, "APPLICATIONS, APPLICANTS, AND CONDITIONS OF EMPLOYMENT", CHAPTER V, "ATTENDANCE AND LEAVES", CHAPTER VI, "WAGE AND SALARY ADMINISTRATION", AND CHAPTER XII, "EMPLOYMENT AT WILL", OF THE CITY OF MIDLAND PERSONNEL POLICIES; AUTHORIZING THE MAYOR TO EXECUTE A CERTIFICATE PLACING THIS RESOLUTION IN THE CITY OF MIDLAND PERSONNEL POLICIES AS AUTHORIZED BY SECTIONS 271.151-160 OF THE TEXAS LOCAL GOVERNMENT CODE; AND SETTING AN EFFECTIVE DATE OF SEPTEMBER 1, 2011. (Administrative Services)

**SECOND READINGS**

16. 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.

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

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

ORDINANCE NO. 8915

AN ORDINANCE ON SECOND READING 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. (First reading held July 26, 2011.) (Planning)

17. 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

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

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

ORDINANCE NO. 8916

AN ORDINANCE ON SECOND READING 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. (First reading held July 26, 2011.) (Planning)

18. 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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8917 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. Following brief discussion, the motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8917

AN ORDINANCE ON SECOND READING 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. (First reading held July 26, 2011.) (Planning)

19. 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

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

Council Member Trost moved to approve the second and final reading of Ordinance No. 8918 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8918

AN ORDINANCE ON SECOND READING 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. (First reading held July 26, 2011.) (Planning)

20. 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.

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

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

ORDINANCE NO. 8919

AN ORDINANCE ON SECOND READING 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. (First reading held July 26, 2011.) (Planning)

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8914 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. Following brief discussion, the motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8914

AN ORDINANCE ON SECOND READING ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION. (First reading held July 26, 2011.) (Transportation)

Mayor Perry noted that it was not yet time for the public hearings and moved item number 31 forward.

**DEVELOPMENT SERVICES**

31. Consider amending the existing ordinance for "School Zones and Crossings" establishing a 30 m.p.h. school zone on a portion of Big Spring Street for Premier Charter High School.

Transportation Division Manager Gary Saunders gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8920.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8920 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8920

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES AND CROSSINGS", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE AND SCHOOL CROSSING WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 8846; 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)

**MISCELLANEOUS**

32. Consider amending 6-10-5, Decision of the Court, making stricter requirements for owning a dangerous dog.

Animal Service Manager Paul O'Neill gave an overview of the item noting that the insurance requirement for having a dangerous dog is being raised from \$250,000 to \$1 million. He noted that specific breeds were not declared dangerous but dangerous dogs would be determined on a case by case basis. He clarified that the required insurance must be filed with the City and that the City must be named as additional insured. He stated that if a person failed to obtain the required insurance, the judge could order that the dog be picked up.

Leslie Hahn, 3307 Stanolind, noted that her granddaughter was mauled by a dog when she was 2 ½ years old and at ten she still is afraid of dogs. She stated she feels this is something that needs to be addressed and is in agreement. Council Member Trost noted he had a nephew that was also attacked by a dog and still has a scar.

City Secretary Turner read the caption of Ordinance No. 8921.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8921 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8921

AN ORDINANCE AMENDING TITLE VI, "POLICE REGULATIONS", CHAPTER 10, "DANGEROUS DOGS", SECTION 5, "DECISION OF THE COURT", OF THE CITY CODE OF MIDLAND, TEXAS; AND AMENDING TITLE VI, "POLICE REGULATIONS", CHAPTER 10, "DANGEROUS DOGS", SECTION 6, "DEFENSE", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REGULATE THE FILING OF DANGEROUS DOG COMPLAINTS IN THE CITY OF MIDLAND MUNICIPAL COURT AND THE DISPOSITION OF SAID COMPLAINTS; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION. (Community Services)

33. Consider allowing further legal action against the owner of a dangerous dog involved in an additional attack.

Animal Service Manager O'Neill gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8922.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8922 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8922

AN ORDINANCE AMENDING TITLE VI, "POLICE REGULATIONS", CHAPTER 10, "DANGEROUS DOGS", BY ESTABLISHING SECTION 8, "ATTACK BY DANGEROUS DOG", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REGULATE THE FILING OF DANGEROUS DOG COMPLAINTS IN THE CITY OF MIDLAND MUNICIPAL COURT AND THE DISPOSITION OF SAID COMPLAINTS; CONTAINING A CUMULATIVE CLAUSE AND EXPRESSLY REPEALING ANY ORDINANCE OR PART

THEREOF IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND NEGATING A MENTAL STATE; AND ORDERING PUBLICATION. (Community Services)

## **PUBLIC HEARINGS**

22. Public hearing to consider a request by Midland Children's Rehabilitation Center for a zone change from 1F-1, One Family Dwelling District to a PDOC, Planned District for an Office Center.

Planning Division Manager Walker gave an overview of the item noting the request was to change the zoning to allow for a building that would be used to store horse equipment for horses and that horses would be housed on site but brought to the site several days per week for the rehabilitation of children. He noted it would be a metal building painted a neutral color. He stated that no letters of objection had been received and that he felt it was a proper building that was suitably located and should have no negative impact.

Mayor Perry opened the public hearing at 10:41 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. 8923.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8923 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

### **ORDINANCE NO. 8923**

an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 2, Block 4, "A" Street Community Center, Section 6, City and County of Midland, Texas, which is presently zoned 1F-1, One-Family Dwelling District, to be used as a PD, Planned District for an Office Center (Generally located on the north side of Ventura Drive, approximately 500 feet west of North "A" 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)

23. Public hearing to consider a request by the Durwood and Kathleen Owen Revocable Living Trust for a zone change from MF-1, Multi-Family Dwelling District to PD, Planned District for a Housing Development.

Planning Division Manager Walker gave an overview of the item noting the applicant is interested in obtaining 21 units per acre density with the understanding that the development of the property would require a site plan review. He noted that staff had no objections, that Planning and Zoning had no objections and that they had received no letters of objection to this request.

Mayor Perry asked if a three-story structure could be built in this zoning. Planning Division Manager Walker noted that three-story structures were allowed but it was previously limited to 16 units per acre. He also clarified that the Council would ultimately approve the site plan.

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

Leslie Hahn, 3307 Stanolind, explained some of the demographics around the property and noted that they had no objection to the development and felt it would be a good way to begin development in the area.

Kathleen Owen, 4653 Behr Springs Road, Pipe Creek, TX, noted she was available to answer any questions. She also stated she received telephone calls from people who would like a grocery store in that area.

There being no one else present wishing to speak, the public hearing was closed at 10:53 a.m.

City Secretary Turner read the caption of Ordinance No. 8924.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8924 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, and James. NAY: None. ABSTAIN: None. ABSENT: Sparks. Caption of said ordinance is as follows:

ORDINANCE NO. 8924

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 161, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF LOOP 250 AND LEISURE 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)

24. Consider annexing approximately 465-acres (Tract 1A) of land located on the north side of SH 191, west of FM 1788 and adopting a service plan.

Mayor Perry opened the public hearing at 10:55 a.m.

Zoe Reyes, 12400 SH 191, asked if her property was included in the annexation. It was determined that it was outside of the area.

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

City Secretary Turner read the caption of Ordinance No. 8925.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8925 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: None. ABSENT: Dufford and Sparks. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8925

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 465.07-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, WEST OF FARM-TO-MARKET ROAD 1788); AND APPROVING A PUBLIC SERVICE PLAN. (Planning)

25. Public hearing to consider establishing the initial zoning of a 465.07-acre tract (Tract 1A) of land located on the north side of SH 191, west of FM 1788.

Planning Division Manager Walker gave an overview of the item noting this item would establish the zoning for the land that was just annexed. He stated that they had received no letters of objection.

Mayor Perry opened the public hearing at 10:59 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. 8926.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8926 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: None. ABSENT: Dufford and Sparks. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8926

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 465.07-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN LR-2, LOCAL RETAIL DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, WEST OF FARM-TO-MARKET ROAD 1788; 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 annexing approximately 220.94-acres (Tract 1B) of land located on the north side of SH 191, west of FM 1788 and adopting a service plan.

Mayor Perry opened the public hearing at 11:01 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. 8927.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8927 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: None. ABSENT: Dufford and Sparks. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8927

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 220.94-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE SOUTH SIDE OF STATE HIGHWAY 191, WEST OF FARM-TO-MARKET ROAD 1788); AND APPROVING A PUBLIC SERVICE PLAN. (Planning)

27. Public hearing to consider establishing the initial zoning of a 220.94-acre tract (Tract 1B) of land located on the south side of SH 191, west of FM 1788.

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

Mayor Perry opened the public hearing at 11:03 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. 8928.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8928 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: None. ABSENT: Dufford and Sparks. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8928

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 220.94-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN LR-2, LOCAL RETAIL DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE SOUTH SIDE OF STATE HIGHWAY 191, WEST OF FARM-TO-MARKET ROAD 1788; 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. Public hearing to consider a request by Airpark Properties for approval of a Planned District Site Plan.

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

Mayor Perry opened the public hearing at 11:06 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. 8929.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8929 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: None. ABSENT: Dufford and Sparks. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8929

AN ORDINANCE ADOPTING A SITE PLAN FOR A 2.95-ACRE TRACT OF LAND OUT OF LOT 1A, BLOCK 1, MIDLAND AIRPARK, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH "A" STREET, APPROXIMATELY 480 FEET NORTH OF WEST WADLEY AVENUE); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (PLANNING)

29. Public hearing to consider a request by Wright Amusements for approval of a Temporary Land Use Permit for a carnival.

Planning Division Manager Walker gave an overview of the item noting staff had no objections to the request and that one letter of objection had been received regarding noise.

Mayor Perry opened the public hearing at 11:09 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member James moved approval of Resolution No. 2011-186; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: None. ABSENT: Dufford and Sparks. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2011-186

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CARNIVAL ON LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND NORTH MIDKIFF ROAD); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; AND THE CHIEF OF POLICE SHALL ENSURE THAT ALL INDIVIDUALS HAVE OBTAINED THE APPROPRIATE LICENSE(S) FROM THE MIDLAND POLICE DEPARTMENT PRIOR TO COMMENCING OPERATIONS. (Planning)

Mayor Perry noted that agenda item number 30 would be held at 6:30 p.m.

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 551.087 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.

**Section 551.071, Consultation with the City Attorney**

Discuss with the City Attorney a matter in which the duty of the City Attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

Mayor Perry noted that after executive session the Council would meet back in the Council Chamber for the final public hearing at 6:30 p.m.

Mayor Perry recessed the meeting to Executive Session at 11:11 a.m. The Council met in executive session until 1:20 p.m.

Mayor Perry reconvened the meeting in the Council Chamber at 6:30 p.m., with the following Council Members present: Morales, Trost, Hailey, Perry, Dufford, James and Sparks.

30. Public hearing regarding a proposal establishing the ad valorem tax rate of \$0.47054 per \$100 taxable assessed valuation for the Fiscal Year 2011-2012. (Finance)

Mayor Perry opened the public hearing at 6:30 p.m.

Matthew Griffin, 4319 Harvard Avenue, stated he has lived in Midland for ten years, had started a business here, bought a home here and his three children were born here. He noted he was a graduate of Midland 101 and was impressed by the foresight and fiscal responsibility of the City. He asked the Council to not make a rate increase noting that his property tax bill was the third largest monthly bill.

Joel Rogers, 2200 North H Street, asked if property taxes were used to pay for infrastructure. Mayor Perry noted that they were used for a lot of things including infrastructure. Mr. Rogers noted he went through the entire budget and did not find anything unusual. He stated this is the second year the City has asked for a tax increase. He has lived here since 1989, and finds it to be a peaceful, pleasant and friendly community. He expressed concern regarding the Master Plan 2025 that encourages tourism, the two NAFTA roads and the Permian Basin economic strategy in which 17 counties together with development corporations and UTPB are developing a unified plan to try to grow the Permian Basin. He stated he does not want to see a population explosion in Midland and therefore is against paying taxes to develop infrastructure to bring in more businesses and more people.

Jason Moore, 2716 Bainbridge, Odessa, noted he spoke with many people who said they weren't coming to this meeting because they felt like it wouldn't matter what they said. He asked what the total increase of dollar amount that city is taking from taxpayers. Council Member James noted that the tax rate did not go up. Mr. Moore asked what the steps were to ensure that the tax payers were not going to build a Taj Mahal fire station where specialty material costs 5-8 times more than regular brick and mortar buildings. Mr. Moore noted he did not distinguish between federal or local dollars noting that they were all tax dollars. He asked what percentage of health and retirement benefits City employees were contributing. Council Member Dufford noted that the city addressed this issue 3-4 years ago and whittled it way down. Mr. Moore asked if the employees get a guaranteed 7% rate of return on retirement. Mayor Perry noted that the City does not offer that here. Mr. Moore asked if anyone lost their job over the apartment complex debacle. The Council responded that the issue was taken care of and the end result was that the apartments and neighborhood got a better deal than what they started with. Mr. Moore complained that the budget file is too large and takes too long to download.

Paul Lewis, 3501 Gulf, asked if the proposed budget is under or over last year's budget. Mayor Perry noted that the tax rate has gone down, the effective right is going up and that there is approximately a \$300,000 increase over the previous year. Mr. Lewis noted that if the City can ration water it can also ration money.

Kara Lawrence, 2914 Goddard Place, noted she has lived in Midland for 14 years and that her taxes have doubled since she's lived here. She asked the Council to have all departments cut their budget by 1%. She noted that the entire country is in crumbs because people are not being fiscally responsible and emphasized the need to start at the local level. She felt that her services had not improved, stated she was thankful for

the firefighters, noted she voted against the ballpark and she felt the EZ Rider should be financially independent. The Council pointed out that if the value of a person's home stays the same, their taxes will go down, but if the value increased you may pay more taxes. Council Member Dufford noted that over the last 10 years the City has not grown the tax rate higher than the inflation rate.

There being no one else present wishing to speak, the public hearing was closed at 7:18 p.m.

No further action was taken on this item.

All of the business at hand having been completed, the meeting adjourned at 7:18 p.m.

PASSED AND APPROVED the 23<sup>rd</sup> day of August, 2011.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, City Secretary