

February 23, 2010

The City Council convened in a Briefing Session in the Basement Conference Room, City Hall, Midland, Texas, at 8:37 a.m. on February 23, 2010, with the following members present:

W. Wesley Perry,
Jerry F. Morales,
W. Jeffrey Sparks,
Michael B. Trost,

Mayor
Council member - At-Large
Council member - District 1
Council member - District 4

John H. James, Mayor Pro Tem, joined the proceedings in progress.

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Staff members present:

Courtney Sharp,
Keith Stretcher,
Tommy Hudson,
Marcus Johnston,
Kaylah McCord,
Monette Burke,
Paul O'Neill,
Mark Phillips,
Tina Jauz,

City Manager
City Attorney
Deputy City Manager
Assistant City Manager
City Secretary
Director, Community Services
Manager, Animal Services
Director, Facilities and Fleet Management
Assistant to the City Mgr./Public Info. Officer

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Animal Services Manager Paul O'Neill presented a report on the Division's current projects. Mr. O'Neill briefly reviewed the structure, staffing and functions of the Animal Services Division, along with relevant statistics. He advised that the City's Animal Shelter receives about 10,000 animals per year, and that it handles in excess of 20,000 animal-related complaints and more than 30,000 phone calls annually. Each year, the Shelter staff reunites about 850 pets with their owners, handles fewer than 1,000 adoptions, and must euthanize about 4,400 animals. The staff also makes presentations in schools relative to animal care and operates the Hogan's Run dog park. Mr. O'Neill advised that Midland has the best spay/neuter voucher program in the State, noting that it is highly effective, built on very good ordinances, and is well supported. He added that the percentage of unaltered animals handled by the Division has dropped from 94% to 86% since the inception of the voucher program, and talked about potential ways to reduce that percentage further. The Animal Services Manager outlined the Division's short-term objectives, including handling fewer animals, reuniting a larger percentage with their owners, and reducing euthanizations. Plans include amending the ordinance to force owners to spay/neuter any impounded pet to reduce the incidence of repeated impoundment (common with unaltered animals); increasing fees; initiating a public relations campaign to promote licensing, vaccinating, spaying/neutering and microchipping; and proactively working in high-call areas. Long-term objectives followed the same lines with further improvements in the numbers, and Mr. O'Neill outlined a long term action plan that calls for construction of an addition to the current shelter building. The addition would be staffed and operated by a reputable nonprofit organization to facilitate adoptions, an important but inefficient process that can best be handled by another agency. He added that this would allow Animal Services to focus on enforcement, education and reuniting owners with their pets. Mr. O'Neill responded to several Council questions regarding handling of impounded animals and dealing with owners, along with penalties, legal aspects and dangerous dog issues. He also reviewed communications and work being done with veterinarians regarding vaccination, microchipping and spaying/neutering.

Facilities and Fleet Management Director Mark Phillips initiated a presentation by Priority Power, the City's power aggregator, on long term power supply and the purchase of electricity for the City. Pat Ennis of Priority Power recalled an opportunity discussed last year for hedging power costs (which did not materialize due to changes in the financial market) and outlined a new long term power supply option for the City's consideration. He analyzed the components of power costs, noting that the commodity component is made up of two elements: fuel cost (largely natural gas, which powers 65% of the plants) and the heat rate, which is a measure of efficiency. The total cost of power is the product of the fuel cost multiplied by the heat rate, plus ERCOT fees and delivery costs. Mr. Ennis reviewed natural gas price volatility over recent years and cited increased generation of wind power, noting that a lack of transmission capacity currently traps this power in West Texas, driving down our heat rate. He discussed efforts underway to get this power moved east to the "load zone", primarily along the I-35 corridor, and

indicated that the transmission capacity should be fully in place by 2014. Mr. Ennis also pointed out that heat rates in our region have reacted almost instantly to the recent completion of just a single 200-mile transmission line. He followed with an analysis of heat rate trends, noting that although the rates for this zone have risen since 2008, they have not done so nearly to the extent that they will as transmission installations are completed in the next three years. He advocated locking in rates quickly, and reviewed the proposed financial structure, noting that J.P. Morgan would handle the wholesale contract and credit support. Mr. Ennis concluded with an analysis of actual vs. hedged rates using a ten-year historical average, advising that the City will be able to hedge about 90% of the power it buys through control of the heat rate, while the remainder will be purchased at the spot price. He encouraged buying out as far as possible because the current cost advantage will soon disappear, and noted that J.P. Morgan will allow the City to buy up to seven years out. Mr. Phillips concurred with Mr. Ennis' contention that there is still value to be captured, noting that the City's current contract runs through 2011. A brief discussion focused on billing issues associated with changing providers, and Mr. Ennis confirmed that the contracts may take some time to finalize. Council response was receptive, and Mayor Perry requested that Staff move forward with developing a proposal for consideration.

The foregoing agenda items at the Briefing Session were discussed by the Council with no formal action taken. The Briefing Session was adjourned at 9:48 a.m.

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The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., February 23, 2010, with the following members present:

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| W. Wesley Perry, | Mayor |
| John H. James, | Mayor Pro Tem |
| A. Scott Dufford, | Council member - At-Large |
| Jerry F. Morales, | Council member - At-Large |
| W. Jeffrey Sparks, | Council member - District 1 |
| Vicky Hailey, | Council member - District 2 |
| Michael B. Trost, | Council member - District 4 |

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Staff members present at the Council Table Annex:

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|------------------|------------------------|
| Courtney Sharp, | City Manager |
| Keith Stretcher, | City Attorney |
| Tommy Hudson, | Deputy City Manager |
| Marcus Johnston, | Assistant City Manager |

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The invocation was voiced by the Reverend Larry L. Long, Fellowship Community Church.

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Mayor Perry led the Pledge of Allegiance to the Flag.

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Council member Hailey presented a Plaque for Distinguished Budget Presentation awarded for the 15th consecutive year to the City of Midland Budget Team by the Government Finance Officers Association. The award was accepted by a group of Budget Team members headed by Finance Director Bob McNaughton, Comptroller Brenda Brown and Accounting Manager Tommy Howell.

Mayor Perry was joined by City Manager Courtney Sharp in presenting a Resolution of Commendation to Claude Jewett, who retired from the Garage Division on January 31, 2010 after more than 16 years of service.

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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.

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A motion was made by Council member James for the approval of the Consent Agenda, listed as Item Nos. 5a through 15, with the exception of Item Nos. 6 and 10, which were temporarily pulled from the agenda.

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(Consent): The minutes of the regular City Council meeting of February 9, 2010 were approved by motion as submitted.

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(Consent): The minutes of the Special City Council meeting of February 12, 2010 were approved by motion as submitted.

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(Consent): The minutes of the Special City Council meeting of February 16, 2010 were approved by motion as submitted.

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(Consent): Resolution No. 2010-054 was adopted approving plans and specifications prepared by Parkhill, Smith and Cooper, Incorporated, and authorizing advertisement for bids for the Midland International Airport Project described as Terminal Building Renovation Project (7004). Caption of said resolution is as follows:

RESOLUTION NO. 2010-054
RESOLUTION APPROVING PLANS AND SPECIFICATIONS
PREPARED BY PARKHILL, SMITH AND COOPER,
INCORPORATED, AND AUTHORIZING ADVERTISEMENT FOR
BIDS FOR THE MIDLAND INTERNATIONAL AIRPORT
PROJECT DESCRIBED AS TERMINAL BUILDING
RENOVATION PROJECT (7004)

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(Consent): Resolution No. 2010-055 was adopted authorizing the execution of a professional services agreement with Parkhill, Smith & Cooper, Incorporated, of Midland, Texas, for professional architectural and engineering services at the Scharbauer Sports Complex at an estimated cost of \$12,500.00 plus associated expenses. Caption of said resolution is as follows:

RESOLUTION NO. 2010-055
RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL,
SMITH & COOPER, INCORPORATED, OF MIDLAND, TEXAS,
FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING
SERVICES AT THE SCHARBAUER SPORTS COMPLEX AT AN
ESTIMATED COST OF \$12,500.00 PLUS ASSOCIATED
EXPENSES

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(Consent): Resolution No. 2010-056 was adopted authorizing an application submitted by Midland-Charger Properties, L.P., for Home Investment Partnership Program Funds from the Texas Department of Housing and Community Affairs to help with the cost associated with the construction of affordable low income housing for senior citizens. Caption of said resolution is as follows:

RESOLUTION NO. 2010-056
RESOLUTION AUTHORIZING AN APPLICATION SUBMITTED
BY MIDLAND-CHARGER PROPERTIES, L.P., FOR HOME
INVESTMENT PARTNERSHIP PROGRAM FUNDS FROM THE
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS TO HELP WITH THE COST ASSOCIATED WITH THE

CONSTRUCTION OF AFFORDABLE LOW INCOME HOUSING
FOR SENIOR CITIZENS

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(Consent): The Council approved a motion on a request by S.W. Howell Engineering, Inc. for CJP Subdivision, to approve a deferral of water and sewer, and to waive the associated public improvement guarantee. This subdivision is generally located about one mile west of Farm to Market Road 1788 on Interstate 20. Total value of deferrals is \$152,020.00.

* * *

(Consent): The Council approved a motion on a request by Schumann Engineering Co., Inc., for Cloverdale East Section 2, to approve a deferral of water and sewer, and to waive the associated public improvement guarantee. Cloverdale East Section 2 is located approximately one half mile east of Highway 158 on Interstate 20. The distance to a water line is 2000 feet. The distance to a sewer line is 2500 feet. Total value of deferrals is \$249,180.00.

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(Consent): Resolution No. 2010-057 was adopted authorizing the City Manager to execute a purchase agreement with Stone Strong of Texas, Incorporated, for the purchase of precast concrete retaining wall blocks for use in the Jal Draw Channel Lining Project at a cost of \$17.50 per square foot for an approximate total cost of \$1,050,000.00; this item was not bid but purchased as a sole source; the purchase agreement contains a cost escalation clause; and allocating funds. Caption of said resolution is as follows:

RESOLUTION NO. 2010-057
RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT WITH STONE STRONG OF TEXAS, INCORPORATED, FOR THE PURCHASE OF PRECAST CONCRETE RETAINING WALL BLOCKS FOR USE IN THE JAL DRAW CHANNEL LINING PROJECT AT A COST OF \$17.50 PER SQUARE FOOT FOR AN APPROXIMATE TOTAL COST OF \$1,050,000.00; THIS ITEM WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; THE PURCHASE AGREEMENT CONTAINS A COST ESCALATION CLAUSE; AND ALLOCATING FUNDS

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(Consent): Resolution No. 2010-058 was adopted approving plans and specifications and authorizing advertisement for competitive bids for the Replacement of Primary Clarifier Effluent Lines Project; said project will replace the effluent lines from the three primary clarifiers at the Water Pollution Control Plant. Caption of said resolution is as follows:

RESOLUTION NO. 2010-058
RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR COMPETITIVE BIDS FOR THE REPLACEMENT OF PRIMARY CLARIFIER EFFLUENT LINES PROJECT; SAID PROJECT WILL REPLACE THE EFFLUENT LINES FROM THE THREE PRIMARY CLARIFIERS AT THE WATER POLLUTION CONTROL PLANT

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(Consent): Resolution No. 2010-059 was adopted appropriating funds from the general liability self-insurance fund unappropriated fund balance to the Atmos Rate Review Mechanism Project (8923) in the amount of \$15,212.00. Caption of said resolution is as follows:

RESOLUTION NO. 2010-059
RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND UNAPPROPRIATED FUND BALANCE TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF \$15,212.00

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The foregoing motion for the approval of the Consent Agenda was seconded by Council member Dufford, and carried by the following vote:

Council members voting "AYE": James, Dufford, Morales, Trost, Hailey, Perry
and Sparks
Council members voting "NAY": None

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Consideration was given to a resolution approving the purchase of automobiles, pickups with regular cabs, pickups with extended cabs and four-wheel drive vehicles of various types, from Rogers Ford of Midland, Texas, and Planet Ford of Spring, Texas, at a total cost of \$328,411.00; and several lower bids are rejected because the bids did not meet specifications.

Asked by Council member Sparks for information on the vehicles being replaced, Facilities and Fleet Management Director Mark Phillips reviewed ages and mileage of each type of vehicle, and explained that four-wheel drive is needed for a few one-ton pickup trucks used by Utilities personnel who must periodically go off-road. Responding to a question about the 120-day delivery specified by Planet Ford and impact on level of service if an old vehicle fails before a replacement arrives, Mr. Phillips advised that although only the four-wheel drive trucks are without backup vehicles, this could be a concern when choosing a bidder. Council member Sparks recommended that if the law allows, the City should consider paying a bit more for a short delivery date to ensure continued service. Council/Staff discussion addressed the extent to which this issue can impact the City's buying decisions, and City Attorney Keith Stretcher agreed that this is a defensible approach in developing the bid specifications, but noted that the law has recently changed and that there is little flexibility unless better value can be established. Additional discussion focused on specifications for this type of equipment.

Council member Sparks moved to amend the proposed resolution to authorize the purchase of the vehicles specified in Items 4 and 5 from Rogers Ford rather than Planet Ford, based on better value offered by a shorter delivery timeframe. Council member Morales seconded the motion, and the proposed amendment was approved by the following vote:

Council members voting "AYE": Sparks, Morales, Trost, Hailey, Perry, Dufford
and James
Council members voting "NAY": None

Resolution No. 2010-060 was adopted as amended, approving the purchase of automobiles, pickups with regular cabs, pickups with extended cabs and four-wheel drive vehicles of various types, from Rogers Ford of Midland, Texas, at a total cost of \$329,501.00. Caption and action had on said resolution are as follows:

RESOLUTION NO. 2010-060
RESOLUTION APPROVING THE PURCHASE OF
AUTOMOBILES, PICKUPS WITH REGULAR CABS, PICKUPS
WITH EXTENDED CABS AND FOUR-WHEEL DRIVE VEHICLES
OF VARIOUS TYPES, FROM ROGERS FORD OF MIDLAND,
TEXAS, AT A TOTAL COST OF \$329,501.00; AND SEVERAL
LOWER BIDS ARE REJECTED BECAUSE THE BIDS DID NOT
MEET SPECIFICATIONS

On motion of Council member Dufford, seconded by Council member Hailey, the above and foregoing resolution was adopted as amended by the City Council of the City of Midland at a regular meeting on the 23rd day of February, A.D., 2010, by the following vote:

Council members voting "AYE": Dufford, Hailey, Morales, Trost, Perry, James
and Sparks
Council members voting "NAY": None

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Mayor Perry advised that he would abstain from deliberation and voting on the next agenda item, and turned the proceedings over to Mayor Pro Tem James.

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Consideration was given to a resolution approving plans and specifications and authorizing advertisement for bids for the West Wall Streetscape Project; said improvements are to be adjacent to the property formerly occupied by the Midland Savings Building; and the anticipated cost for the project is \$62,500.00; said project will be for the construction of sidewalks and tree wells and the planting of additional trees.

Council member Trost asked if funds have already been budgeted for this project. City Engineer René Franks responded negatively, advising that leftover bond funds are available to cover a portion of the cost and that \$34,500 must be appropriated to complete the project. A brief discussion addressed the possibility of deferring the project to next year's budget, efforts made to minimize costs, and the need to confer with the City's arborist to develop the tree specifications.

Resolution No. 2010-061 was adopted approving plans and specifications and authorizing advertisement for bids for the West Wall Streetscape Project. Caption and action had on said resolution are as follows:

RESOLUTION NO. 2010-061
RESOLUTION APPROVING PLANS AND SPECIFICATIONS
AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE
WEST WALL STREETScape PROJECT; SAID
IMPROVEMENTS ARE TO BE ADJACENT TO THE PROPERTY
FORMERLY OCCUPIED BY THE MIDLAND SAVINGS
BUILDING; AND THE ANTICIPATED COST FOR THE PROJECT
IS \$62,500.00; SAID PROJECT WILL BE FOR THE
CONSTRUCTION OF SIDEWALKS AND TREE WELLS AND
THE PLANTING OF ADDITIONAL TREES

On motion of Council member Dufford, seconded by Council member Morales, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 23rd day of February, A.D., 2010, by the following vote:

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| Council members voting "AYE": | Dufford, Morales, Trost, Hailey, James and Sparks |
| Council members "ABSTAINING": | Perry |
| Council members voting "NAY": | None |

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Mayor pro tem James returned control of the meeting to Mayor Perry.

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Ordinance No. 8781 was adopted on second and final reading making certain transfers in various funds of the 2008-2009 Fiscal Year Budget and making certain budget amendments; and ordering recordation. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8781
AN ORDINANCE MAKING CERTAIN TRANSFERS IN VARIOUS
FUNDS OF THE 2008-2009 FISCAL YEAR BUDGET AND
MAKING CERTAIN BUDGET AMENDMENTS; AND ORDERING
RECORDATION

The above and foregoing ordinance was read and finally adopted, in accordance with the Charter of the City of Midland, by the following vote upon motion of Council member Hailey, seconded by Council member Morales, on the 23rd day of February, A.D., 2010, at a regular meeting of the City Council.

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| Council members voting "AYE": | Hailey, Morales, Trost, Perry and Sparks |
| Council members voting "NAY": | None |

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Consideration was given on second reading to an ordinance establishing Project Number 8933 "Citibank Ball Park Infield Improvements Project"; amending the official municipal budget for fiscal year 2009-2010 in order to meet unforeseen conditions which could not by reasonably diligent thought and attention have been included in the original budget for the 2009-2010 fiscal year; and appropriating \$140,000.00 to fund the projects established herein.

Responding to Council observations that the City should have a process in place to help foresee the need for this project so that it could be included in the budget process, Parks and Recreation Manager Scott Swigert explained that selection of the project was coordinated with the 4B Board of Directors, which made its recommendation last fall after evaluating potential projects to determine what was most critical. Council member James agreed that the 4B Board should put these needs on the same path as other City capital projects in the future, and indicated that he would pursue that issue.

Ordinance No. 8782 was adopted on second and final reading establishing Project Number 8933, "Citibank Ball Park Infield Improvements Project", amending the official municipal budget for fiscal year 2009-2010, and appropriating funds. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8782
AN ORDINANCE ESTABLISHING PROJECT NUMBER 8933
"CITIBANK BALL PARK INFIELD IMPROVEMENTS PROJECT";
AMENDING THE OFFICIAL MUNICIPAL BUDGET FOR FISCAL
YEAR 2009-2010 IN ORDER TO MEET UNFORSEEN
CONDITIONS WHICH COULD NOT BY REASONABLY
DILIGENT THOUGHT AND ATTENTION HAVE BEEN
INCLUDED IN THE ORIGINAL BUDGET FOR THE 2009-2010
FISCAL YEAR; AND APPROPRIATING \$140,000.00 TO FUND
THE PROJECTS ESTABLISHED HEREIN

The above and foregoing ordinance was read and finally adopted, in accordance with the Charter of the City of Midland, by the following vote upon motion of Council member Hailey, seconded by Council member Dufford, on the 23rd day of February, A.D., 2010, at a regular meeting of the City Council.

Council members voting "AYE": Hailey, Dufford, Morales, Trost, Perry, James
and Sparks
Council members voting "NAY": None

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Ordinance No. 8783 was adopted on second and final reading amending the boundaries of Districts Two and Four where citizens will elect City Council members to serve on the City Council of Midland, Texas. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8783
AN ORDINANCE AMENDING THE BOUNDARIES OF
DISTRICTS TWO AND FOUR WHERE CITIZENS WILL ELECT
CITY COUNCIL MEMBERS TO SERVE ON THE CITY COUNCIL
OF MIDLAND, TEXAS

The above and foregoing ordinance was read and finally adopted, in accordance with the Charter of the City of Midland, by the following vote upon motion of Council member Hailey, seconded by Council member Sparks, on the 23rd day of February, A.D., 2010, at a regular meeting of the City Council.

Council members voting "AYE": Hailey, Sparks, Morales, Trost, Perry, Dufford
and James
Council members voting "NAY": None

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Ordinance No. 8784 was adopted without discussion on the first of two readings, vacating and abandoning an 80-foot by 140-foot portion of Adams Street Right-of-Way located between Lot 1, Block 55, East Midland Addition, Section 12, and Lot 1, Block 56, East Midland Addition, City and County of Midland, Texas (generally located between Cherry Lane and Garden Lane); adopting the appraisal by the City Manager of \$1,120.00; and ordering recordation by the City Secretary. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8784
AN ORDINANCE VACATING AND ABANDONING AN 80-FOOT
BY 140-FOOT PORTION OF ADAMS STREET RIGHT-OF-WAY
LOCATED BETWEEN LOT 1, BLOCK 55, EAST MIDLAND

ADDITION, SECTION 12, AND LOT 1, BLOCK 56, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED BETWEEN CHERRY LANE AND GARDEN LANE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$1,120.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

The above and foregoing ordinance was duly proposed, read and adopted on first reading in accordance with the Charter of the City of Midland, the 23rd day of February, A.D., 2010; and passed to second reading on motion of Council member Dufford, seconded by Council member Hailey, by the following vote:

Council members voting "AYE": Dufford, Hailey, Morales, Trost, Perry, James and Sparks
Council members voting "NAY": None

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Consideration was given to an ordinance establishing intersection stop signs 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 Manager Gary Saunders advised that Staff has performed traffic studies and analyzed traffic control needs at 22 intersections in the recently annexed "windowpane" area, and that the proposed ordinance serves to make these intersection stops official. Council questions followed regarding the Police Department's approach to enforcement. Police Chief Price Robinson advised that they are making every effort to work with those who travel in the area to allow them to get used to the new traffic controls, noting that the decision on whether to issue a citation is at the officer's discretion.

Ordinance No. 8785 was adopted on the first of two readings, establishing intersection stop signs at various locations within the City and providing for related activities. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8785
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

The above and foregoing ordinance was duly proposed, read and adopted on first reading in accordance with the Charter of the City of Midland, the 23rd day of February, A.D., 2010; and passed to second reading on motion of Council member Dufford, seconded by Council member Hailey, by the following vote:

Council members voting "AYE": Dufford, Hailey, Morales, Trost, Perry, James and Sparks
Council members voting "NAY": None

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Police Chief Price Robinson presented the Midland Police Department Traffic Contact Report.

Chief Robinson reviewed the reporting requirements, advising that officers collect information on all traffic stops where a citation is issued or an arrest made. The Chief also reviewed new Tier 1 requirements, which added an additional ethnicity category and redefined Tier 1 to include "any motor vehicle contact" (not just a traffic stop). The officer also must now indicate whether he knew the ethnicity of the driver before initiating each Tier 1 contact, and the Department must submit an annual report to TCLEOSE as well as the governing body. Chief Robinson indicated that the annual comparison is made relative to the "Fair Roads" standard, which uses ten-year-old Census demographic data as a benchmark for analysis. He followed with statistics on overall traffic-related contacts, discretionary searches and arrests by ethnicity over the past

year, along with comparisons over the most recent eight years. He advised that the MPD has always collected more data than required by law, that they were already doing many of the things that the new law now requires, and that the findings are audited every year for compliance. Chief Robinson reported that there were no complaints of racial profiling in 2009.

Following the report, the Police Chief responded to Council questions regarding the basis for establishing that a complaint exists regarding racial profiling, issues related to after-hours businesses, and areas of the City that are heavily worked for traffic and safety.

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A public hearing was held and consideration given to an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 6, Block 1, Amaron Addition, Section 7, 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 northwest corner of the intersection of Interstate 20 and Camp 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 Division Manager Cameron Walker advised that the developer of the Country Inn and Suites is now requesting to amend the existing Planned District to allow an increased sign height, from 40 feet to 50 feet. Mr. Walker confirmed that the requested height is allowed on I-20 under the City's sign regulations, that there has been no opposition, and that Staff supports the request. Asked if the Texas Department of Transportation would have an interest in this matter, Mr. Walker advised that TxDOT has its own regulations but that nothing allowed by the City would violate those requirements.

Mayor Perry opened the public hearing.

There being no one present wishing to speak either for or against said request, Mayor Perry closed the public hearing.

Ordinance No. 8786 was adopted on the first of two readings approving the requested zone change. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8786
AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 6, BLOCK 1, AMARON ADDITION, SECTION 7, 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 NORTHWEST CORNER OF THE INTERSECTION OF INTERSTATE 20 AND CAMP 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

The above and foregoing ordinance was duly proposed, read and adopted on first reading in accordance with the Charter of the City of Midland, the 23rd day of February, A.D., 2010; and passed to second reading on motion of Council member Hailey, seconded by Council member Dufford, by the following vote:

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| Council members voting "AYE": | Hailey, Dufford, Morales, Trost, Perry, James and Sparks |
| Council members voting "NAY": | None |

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A public hearing was held and consideration given to an ordinance changing the zoning use classification of the property described as a 3.5-acre portion of Tract 6 and a 0.39-acre portion of Tract 7, Johnson Moran, and Lot 2, Block 8, Town and Country Annex, Section 3, City and

County of Midland, Texas (generally located west of the intersection of Andrews Highway and Cuthbert Avenue), which is presently zoned 1F-1, One-Family Dwelling District, by permitting said property to be used under a Specific Use Permit with Term for a day care center; 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.

Mr. Walker reviewed the request, explaining that Memorial Christian Church wishes to open a day care center on the Church property. He advised that the proposed center would occupy a 2,000 square-foot area inside the existing building, serving a maximum of 50 children at any one time, and he reviewed proposed hours of operation. The Planning Division Manager added that this constitutes a change of use that triggers some changes in building code requirements and confirmed that the applicant is aware of the situation and is prepared to comply. The applicant also wants to erect a sign of no more than 50 square feet with a height of four feet. Mr. Walker advised that there were no letters of objection and that Staff supports the request.

Mayor Perry opened the public hearing.

There being no one present wishing to speak either for or against said request, Mayor Perry closed the public hearing.

Ordinance No. 8787 was adopted on the first of two readings approving the requested Specific Use Permit with Term for a day care center. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8787
AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 3.5-ACRE PORTION OF TRACT 6 AND A 0.39-ACRE PORTION OF TRACT 7, JOHNSON MORAN, AND LOT 2, BLOCK 8, TOWN AND COUNTRY ANNEX, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED WEST OF THE INTERSECTION OF ANDREWS HIGHWAY AND CUTHBERT AVENUE), WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR A DAY CARE CENTER; 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

The above and foregoing ordinance was duly proposed, read and adopted on first reading in accordance with the Charter of the City of Midland, the 23rd day of February, A.D., 2010; and passed to second reading on motion of Council member Dufford, seconded by Council member Morales, by the following vote:

Council members voting "AYE": Dufford, Morales, Hailey, Perry, James and Sparks
Council members "ABSTAINING": Trost
Council members voting "NAY": None

* * *

A public hearing was held and consideration given to an ordinance changing the zoning use classification of the property described as Lot 1 and the north 30 feet of Lot 2, Block 60½, Original Town, and a 10 foot by 80 foot portion of Carrizo Street, City and County of Midland, Texas (generally located on the southeast corner of the intersection of South "A" Street and West Wall Street), which is presently zoned C-1, Central Area District, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00);and ordering publication.

The Planning Division Manager explained that the owner of this property, which is occupied by a restaurant, has requested a Specific Use Permit for alcoholic beverages sales, and he reviewed

the proposed hours of operation, noting that the hours are very reasonable and that it should have a positive impact on downtown redevelopment. He noted that parking arrangements are slightly problematic and that Staff has incorporated conditions to assure that vehicle parking does not encroach on the sidewalk right-of-way. There were no letters of objection to the request.

Mayor Perry opened the public hearing.

There being no one present wishing to speak either for or against said request, Mayor Perry closed the public hearing.

Ordinance No. 8788 was adopted on the first of two readings approving the requested Specific Use Permit with Term for the on-premises sale and consumption of all alcoholic beverages in a restaurant on the described property. Caption and action had on said ordinance are as follows:

ORDINANCE NO. 8788
AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1 AND THE NORTH 30 FEET OF LOT 2, BLOCK 60½, ORIGINAL TOWN, AND A 10 FOOT BY 80 FOOT PORTION OF CARRIZO STREET, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH "A" STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

The above and foregoing ordinance was duly proposed, read and adopted on first reading in accordance with the Charter of the City of Midland, the 23rd day of February, A.D., 2010; and passed to second reading on motion of Council member Hailey, seconded by Council member Morales, by the following vote:

Council members voting "AYE": Hailey, Morales, Trost, Perry, Dufford, James and Sparks
Council members voting "NAY": None

* * *

A public hearing was held and consideration given to a resolution authorizing the temporary use of land for outdoor plant sales 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.

Mr. Walker described the request, initiated by Midland Park Mall on behalf of the owner of Garden View Greenhouses, for a Temporary Land Use permit for outdoor plant sales in the Midland Park Mall parking lot. He explained that the request is to hold such sales during Mall operating hours over a three-month period from April to June. Mr. Walker advised that Staff does not support this request and views the requested three-month sales period as misuse of a Temporary Land Use permit, which is normally issued for two to three weeks. He added that there have been no objections to the request, but that Staff is concerned that it would set an undesirable precedent.

Mayor Perry opened the public hearing.

There being no one present wishing to speak either for or against said request, Mayor Perry closed the public hearing.

Council member Dufford moved to deny the request. Council member James seconded the motion, and the requested Temporary Land Use permit for outdoor plant sales on the described property was denied by the following vote:

Council members voting "AYE": Dufford, James, Morales, Trost, Hailey, Perry
and Sparks
Council members voting "NAY": None

* * *

Consideration was given to a motion making appointments to various Boards and Commissions.

The Council briefly discussed additional appointments to the newly-formed Oil and Gas Advisory Committee. Upon motion by Council member Sparks, seconded by Council member Dufford, the following individual was unanimously appointed to said Committee as set forth below:

OIL AND GAS ADVISORY COMMITTEE

| | | | |
|-------------------|---|-----------|---|
| D. Patrick Darden | - | appointed | <u>Term Expires</u> TBD – One year term begins when appoint- ments are completed |
|-------------------|---|-----------|---|

* * *

At 11:42 a.m., Mayor Perry announced that pursuant to Texas Government Code Section 551.101, the Council would now hold an Executive Session which is closed to the public, to discuss the following matters as permitted under the following Texas Government Code Sections:

Personnel Matters, Section 551.074

Deliberate the appointment, employment, duties and compensation of an Interim City Secretary.

Deliberation Regarding Real Property, Section 551.072

Deliberate the purchase, exchange and value of real property described as Lots 7 through 12, Block 23, Resurvey of Midland Heights Addition according to the plat filed in Volume 18, Page 581 of the Deed Records of Midland County, Texas.

and the Council retired from the Council Chamber to the Basement Conference Room to hold such session in conjunction with lunch. Mayor Perry announced at the same time that the meeting would reconvene at that location to address the remaining business on the agenda, and would adjourn there as well.

* * *

Mayor Perry reconvened the meeting in the Basement Conference Room at 12:10 p.m. with the same members present.

* * *

Consideration was given to a motion authorizing the appointment of an individual to the position of Interim City Secretary of the City of Midland, and authorizing the execution of an employment agreement with the selected individual.

Council member James moved to appoint Amy Turner to the position of Interim City Secretary and to authorize the execution of an employment agreement with Ms. Turner. Council member Trost seconded the motion, which was approved by the following vote:

Council members voting "AYE": James, Trost, Morales, Perry, Dufford
and Sparks
Council members "ABSTAINING": Hailey
Council members voting "NAY": None

* * *

All of the business at hand having been completed, the meeting adjourned at 12:11 p.m.