

**MIDLAND CITY COUNCIL  
MINUTES  
APRIL 13, 2010**

The City Council convened in a Briefing Session in the Basement Conference Room, City Hall, Midland, Texas, at 9:04 a.m. on April 13, 2010.

Council Members present: Mayor Perry, Mayor Pro Tem James (District 3), Council Member Dufford (At-Large), Council Member Morales (At-Large), Council Member Sparks (District 1), Council Member Hailey (District 2), Council Member Trost (District 4)

Staff members present: City Manager Sharp, City Attorney Stretcher, Deputy City Manager Hudson, Assistant City Manager Johnston, Interim City Secretary Turner, Community Services Director Burke, Development Services Director Crownover, Director of Utilities Purvis, Director of Finance McNaughton, Administrative Services Director Mosley, Assistant to the City Manager/Public Information Officer Jauz.

**BRIEFING SESSION**

Discuss the Fiscal Year 2010-2011 Budget and discuss the forecast for projected revenues and expenditures.

Director of Finance McNaughton reviewed the 2010-2011 forecast for projected revenues and expenditures.

The foregoing agenda item was discussed by the Council with no formal action taken. The Briefing Session was adjourned at 10:00 a.m.

**REGULAR SESSION**

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:08 a.m., April 13, 2010.

Council Members present: Mayor Perry, Mayor Pro Tem James (District 3), Council Member Dufford (At-Large), Council Member Morales (At-Large), Council Member Sparks (District 1), Council Member Hailey (District 2), Council Member Trost (District 4)

Staff members present: City Manager Sharp, City Attorney Stretcher, Deputy City Manager Hudson, Assistant City Manager Johnston.

**MISCELLANEOUS**

1. The invocation was voiced by Larry L. Long of Fellowship Community Church.
2. Mayor Perry led the Pledge of Allegiance to the Flag.
3. Presentation of special events, organizations, individuals, or periods of time.
  - a. Presentation of Proclamation for Parkinson's Disease Awareness Month.  
No one was present to receive the proclamation.
  - b. Presentation of Proclamation for Fair Housing Month.  
  
Mayor Pro Tem James presented a proclamation to Community Development Manager Cantu and to representatives from Midland College and Midland Community Development Corporation.
  - c. Presentation of Proclamation for Public Health Month.  
  
Council Member Trost presented a proclamation to Health and Senior Services Administrator Garcia.
  - d. Recognition of the 2009-2010 Midland 101 Graduates.  
  
Mayor Perry presented a plaque to each Midland 101 Graduate.

**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.

Ana O'Bryant, 1909 Hughes, spoke regarding sewer issues near Midland Christian School.

There were no other requests by citizens to speak.

**CONSENT AGENDA**

Council Member James moved to approve Consent Agenda items 5a, 6, 8-16, and 18-20; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

- 5a. Approved the minutes of the regular City Council meeting of March 9, 2010.

6. Adopted Resolution No. 2010-078. Caption of said resolution is as follows:

RESOLUTION NO. 2010-078

RESOLUTION APPROVING THE PURCHASE OF TWO (2) THIRTY-THREE CUBIC YARD REFUSE BODIES FROM SOUTHWESTERN EQUIPMENT COMPANY OF JUSTIN, TEXAS, AND ONE (1) TWENTY CUBIC YARD REFUSE BODY FROM EQUIPMENT SOUTHWEST, INCORPORATED, OF IRVING, TEXAS, AT A TOTAL COST OF \$179,710.00.

8. Adopted Resolution No. 2010-079. Caption of said resolution is as follows:

RESOLUTION NO. 2010-079

RESOLUTION AUTHORIZING THE PURCHASE OF FOUR HUNDRED AND FORTY (440) METER TRANSCEIVER UNITS TO BE USED WITH THE CITY'S NEW AUTOMATED WATER METER READER SYSTEM, FROM WESTERN INDUSTRIAL SUPPLY, L.L.C., OF ODESSA, TEXAS; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE COSTS FOR THE METER TRANSCEIVER UNITS SHALL BE APPROXIMATELY \$50,600.00.

9. Adopted Resolution No. 2010-080. Caption of said resolution is as follows:

RESOLUTION NO. 2010-080

RESOLUTION APPROVING THE PURCHASE OF FOUR HUNDRED AND FORTY (440) WATER METERS OF VARIOUS SIZES, ALL WITH ENCODER REGISTERS, FROM BADGER METER, INCORPORATED, AND WESTERN INDUSTRIAL SUPPLY, L.L.C., AT A TOTAL COST OF \$52,212.20.

10. Adopted Resolution No. 2010-081. Caption of said resolution is as follows:

RESOLUTION NO. 2010-081

RESOLUTION AUTHORIZING THE PURCHASE OF ONE HUNDRED SIXTY SEVEN (167) TONS OF EMULSIFIED ASPHALT FROM NK ASPHALT PARTNERS DBA HOLLY ASPHALT COMPANY, AT A TOTAL COST OF \$82,999.00.

11. Adopted Resolution No. 2010-082. Caption of said resolution is as follows:

RESOLUTION NO. 2010-082

RESOLUTION APPROVING THE PURCHASE OF AN ASPHALT PAVER THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF \$65,841.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS.

12. Adopted Resolution No. 2010-083. Caption of said resolution is as follows:

RESOLUTION NO. 2010-083

RESOLUTION AUTHORIZING AN AMENDMENT TO THE EXISTING SPRABERRY FARM LEASE EXTENSION AGREEMENT WITH SPRABERRY CGC, INCORPORATED; THIS AMENDMENT WILL REDUCE EXPENDITURES MADE BY THE CITY FOR FERTILIZER, REDUCE PAYMENTS MADE TO CITY BY SPRABERRY

CGC, INCORPORATED, AND EXTEND THE TERM OF THE AGREEMENT BY ELEVEN (11) MONTHS.

13. Adopted Resolution No. 2010-084. Caption of said resolution is as follows:

RESOLUTION NO. 2010-084

RESOLUTION AUTHORIZING THE PURCHASE OF THE NORTHERNMOST 541 SQUARE FEET OF THE WEST HALF OF BLOCK 2, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, FROM RICHARD CORNETT OF MIDLAND, TEXAS, FOR \$108.20; ALL CLOSING COSTS TO BE BORNE BY THE CITY OF MIDLAND; AND ORDERING RECORDATION BY THE INTERIM CITY SECRETARY.

14. Adopted Resolution No. 2010-085. Caption of said resolution is as follows:

RESOLUTION NO. 2010-085

RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT OF WAY LICENSE AGREEMENT WITH PATRIOT RESOURCES INCORPORATED FOR 794.55 RODS FOR A WATER PIPELINE IN SECTION 34, BLOCK 38, T-1-N, AND SECTION 5, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS.

15. Adopted Resolution No. 2010-086. Caption of said resolution is as follows:

RESOLUTION NO. 2010-086

RESOLUTION ESTABLISHING PROJECT NUMBER 8939 "CREMATION UNIT RENOVATION 2010" FOR RENOVATION OF THE ANIMAL SERVICES CREMATION UNIT; AND APPROPRIATING \$6,500.00 THEREFOR.

16. Approved a request by Schumann Engineering Co., Inc. for Pecan Acres Addition Section 5, to approve a deferral of sewer and street paving with curb and gutter, and to waive the associated public improvement guarantee. (Generally located in our Extra Territorial Jurisdiction on Trenton Drive near Trobaugh Boulevard. Total value of deferrals is \$310,000.

18. Adopted Resolution No. 2010-087. Caption of said resolution is as follows:

RESOLUTION NO. 2010-087

RESOLUTION ACCEPTING ADDITIONAL GRANT FUNDING FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$17,000; THESE FUNDS WILL BE DIRECTED TO THE 09 HIGH INTENSITY DRUG TRAFFICKING AREAS PROJECT 7010; AND APPROPRIATING FUNDS.

19. Adopted Resolution No. 2010-088. Caption of said resolution is as follows:

RESOLUTION NO. 2010-088

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND PIONEER NATURAL RESOURCES FOR SERVICE TO #7 EAST INDUSTRIAL LOOP, MIDLAND, TEXAS, 79701; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; PIONEER NATURAL RESOURCES HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; PIONEER NATURAL RESOURCES 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 INTERIM CITY SECRETARY.

20. Approved a request directing City staff to proceed with two requests for annexation of approximately 105 acres of land located on the west side of Tradewinds Boulevard, north of Thomason Drive and on the north side of Briarwood Avenue, west of Holiday Hill Road.

- 5b. Consider minutes of the special City Council meeting of March 23, 2010.

Council Member Hailey questioned whether the boards and commissions had been sunset and requested appointment of herself to the Hotel/Motel Tax Advisory Board when a position became vacant. Council consensus was that she would likely be appointed to that position when a vacancy occurred.

City Attorney Stretcher noted that the Council would need to take formal action to sunset those boards using the same vehicle with which they were created.

Council directed staff to place on the next agenda, the formal sunseting of the boards previously discussed at the March 23, 2010 special meeting.

Mayor Pro Tem James moved to amend the minutes as follows: strike "Appoint Mayor Pro Tem James as a voting member of the Midland Football-Soccer and Baseball Complex Development Corporation" as he was previously appointed; strike "Appoint Council Member Morales as a voting member of the Midland Housing Finance Corporation" as he was previously appointed; strike "Appoint Mayor Pro Tem James and Council Member Trost as voting members of the Midland-Odessa Urban Transit District Board" as they were previously appointed; seconded by Council Member Trost. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

Council Member Dufford moved to approve the minutes of the special City Council meeting of March 23, 2010 as amended; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

7. Consider resolution accepting a \$25,000.00 contribution to be used toward Wall Street Rehabilitation Project # 8651 from Tax Reinvestment Zone # 1; authorizing the execution of a contract for the construction of sidewalks and tree wells as part of said project with Desert Paving, Incorporated, of Odessa, Texas, at an estimated cost of \$57,640.00; and appropriating funds.

Mayor Perry noted he would abstain from voting on this issue, turned the gavel over to Mayor Pro Tem James, and left the dais.

A discussion ensued in which it was determined that trees were not included in this contract.

Council Member Dufford moved to approve Resolution No. 2010-089; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, and James. NAY: None. ABSTAIN: Perry. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-089

RESOLUTION ACCEPTING A \$25,000.00 CONTRIBUTION TO BE USED TOWARD WALL STREET REHABILITATION PROJECT # 8651 FROM TAX REINVESTMENT ZONE # 1; AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE CONSTRUCTION OF SIDEWALKS AND TREE WELLS AS PART OF SAID PROJECT WITH DESERT PAVING, INCORPORATED, OF ODESSA, TEXAS, AT AN ESTIMATED COST OF \$57,640.00; AND APPROPRIATING FUNDS.

Mayor Perry returned to the dais.

17. Consider a resolution accepting a grant from the Southwest Border High Intensity Drug Trafficking Areas Program in the amount of \$157,400.00; this grant will be utilized for the purpose of enhancing and coordinating drug control efforts among federal, state, and local law enforcement agencies to better combat drug trafficking; and appropriating funds.

Following discussion, Council Member Morales moved to approve Resolution No. 2010-090; seconded by Council Member Trost. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-090

RESOLUTION ACCEPTING A GRANT FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$157,400.00; THIS GRANT WILL BE UTILIZED FOR THE PURPOSE OF ENHANCING AND COORDINATING DRUG CONTROL EFFORTS AMONG FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES TO BETTER COMBAT DRUG TRAFFICKING; AND APPROPRIATING FUNDS.

21. Consider a motion approving the 2009 Downtown Midland Tax Increment Reinvestment Zone No. 1 Annual Report.

Upon request, Planner Melland gave an overview of the TIRZ Program and its goals.

Council Member Morales moved to approve the 2009 Downtown Midland Tax Increment Reinvestment Zone No. 1 Annual Report; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None.

## SECOND READINGS

22. Interim City Secretary Turner read the caption of Ordinance No. 8789.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8789 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, James, and Perry. NAY: Hailey, and Trost. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

### ORDINANCE NO. 8789

AN ORDINANCE VACATING AND ABANDONING WITH RESERVATIONS A 0.038-ACRE PORTION OF NORTHRUP DRIVE RIGHT-OF-WAY NORTH OF SINCLAIR AVENUE AND SOUTH OF NEELY AVENUE, AND A 0.024-ACRE PORTION OF THE NORTH/SOUTH ALLEY, (APPROXIMATELY 1,051 SQUARE FEET), GENERALLY LOCATED SOUTH OF NEELY AVENUE, NORTH OF GULF AVENUE, EAST OF NORTHRUP DRIVE AND WEST OF CULVER DRIVE, AND A 0.055-ACRE PORTION OF NORTHRUP DRIVE RIGHT-OF-WAY IN THE CITY OF MIDLAND IN SECTION 21, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (APPROXIMATE 2,395 SQUARE FOOT TRACT OF LAND LOCATED NORTH OF SINCLAIR AVENUE AND SOUTH OF GULF AVENUE); AND A 1.260-ACRE PORTION OF CULVER DRIVE RIGHT-OF-WAY ADJACENT TO LOTS 1-11, BLOCK 8, WEST WAY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ADJACENT TO MIDLAND CHRISTIAN SCHOOL, NORTH OF SINCLAIR AVENUE AND SOUTH OF GULF AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$134,991.00; AND ORDERING RECORDATION BY THE INTERIM CITY SECRETARY; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A SPECIAL WARRANTY DEED WITH RESERVATIONS WITH MIDLAND CHRISTIAN SCHOOL; AND ESTABLISHING AN EFFECTIVE DATE FOR THE VACATING AND ABANDONING.

23. Interim City Secretary Turner read the caption of Ordinance No. 8790.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8790 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

### ORDINANCE NO. 8790

AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 2, "PLATS AND SUBDIVISIONS", SECTION 5, "REQUIREMENTS FOR PUBLIC IMPROVEMENTS, RESERVATION AND DESIGN", SUBSECTION (B), "LOT DESIGN AND IMPROVEMENTS", PARAGRAPH 8, "SITE PLAN APPROVAL", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ADD THE IP-1, INDUSTRIAL PARK DISTRICT TO THE ZONING DISTRICTS EXEMPTED UNDER SUBPARAGRAPH 8(A), AND SO AS TO DELETE SUBPARAGRAPHS 8(C)-(G); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); AND ORDERING PUBLICATION.

24. Interim City Secretary Turner read the caption of Ordinance No. 8791.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8791 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None.

Mayor Pro Tem James moved to reconsider item number 24; seconded by Council Member Trost. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None.

Mayor Pro Tem James moved to insert the word "Interim" in front of "City Secretary" in the Caption of Ordinance No. 8791. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8791

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST 40 FEET OF LOT 2 AND EAST 20 FEET OF LOT 3, BLOCK 70, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 60 FEET WEST OF NORTH "K" STREET), BY PERMITTING AN ENCROACHMENT INTO THE REQUIRED FRONT YARD SETBACK FOR CONSTRUCTION OF A CARPORT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE INTERIM CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION.

25. Interim City Secretary Turner read the caption of Ordinance No. 8792.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8792 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8792

AN ORDINANCE AMENDING THE FIRE DISTRICT SO AS TO DELETE THEREFROM LOT 1, BLOCK 10, TRUELAND ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY DESCRIBED AS 2107 NORTH FAIRGROUNDS ROAD); DIRECTING THE BUILDING OFFICIAL TO AMEND THE FIRE DISTRICT MAP; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE.

26. Interim City Secretary Turner read the caption of Ordinance No. 8784.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8784 in accordance with the Charter of the City of Midland with the amendment of adding the word "Interim" before City Secretary; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None.

Caption of said ordinance is as follows:

ORDINANCE NO. 8784

AN ORDINANCE ON A SECOND READING 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 INTERIM CITY SECRETARY.

**PUBLIC HEARINGS**

27. Senior Planner Compton gave an overview of the item noting that staff recommended approval.

Mayor Perry opened the public hearing at 11:02 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8793.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8793 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8793

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 7, BLOCK 15, COLLEGE HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF COLLEGE AVENUE AND BURLESON STREET), BY PERMITTING AN ENCROACHMENT INTO THE REQUIRED SIDE YARD SETBACK FOR CONSTRUCTION OF A GARAGE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE INTERIM CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION.

28. Senior Planner Compton gave an overview of the item noting that staff recommended approval and that no letters of opposition had been received.

Mayor Perry opened the public hearing at 11:05 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8794.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8794 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8794

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 30, BLOCK 22, CRESTGATE ADDITION, SECTION 40, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF COQUINA COURT, APPROXIMATELY 140 FEET SOUTH OF BLUEBIRD LANE), BY PERMITTING AN ENCROACHMENT INTO THE REQUIRED FRONT YARD SETBACK FOR CONSTRUCTION OF A PRIMARY STRUCTURE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE INTERIM CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION.

29. Senior Planner Compton gave an overview of the item noting that staff recommended approval and that no letters of opposition had been received.

Mayor Perry opened the public hearing at 11:13 a.m.

Applicant Jorge Hernandez, 3414 West Michigan, explained what materials would be used to construct the temporary structure and noted that his company hoped to recapture business lost to other big box retailers.

There being no one else present wishing to speak the public hearing was closed.

Council Member Sparks moved to adopt Resolution No. 2010-091; seconded by Council Member Trost. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-091

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.

30. Mayor Perry opened the public hearing at 11:17 a.m.

Jimmy Ferrell, 22626 Westbrook, Katy, Texas, and managing director of Plains All American Pipeline gave an overview of their company and their business.

Steve Carter, 5781 Birdie Lane, Mentor, Ohio, gave overview of the Texas Enterprise Zone Program.

City Attorney Stretcher noted that all economic development agreements require annexation but this one did not. He further explained that if Council would like to require annexation, a provision would need to be added to the agreement.

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

Interim City Secretary Turner read the caption of Ordinance No. 8795.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8795 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8795

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, ORDAINING THE CITY'S PARTICIPATION IN THE TEXAS ENTERPRISE ZONE PROGRAM PURSUANT TO THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE (THE "ACT"); PROVIDING TAX INCENTIVES; DESIGNATING A LIAISON FOR THE COMMUNICATION WITH INTERESTED PARTIES; NOMINATING PLAINS ALL AMERICAN PIPELINE, L.P., TO THE OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM ("EDT") THROUGH THE ECONOMIC DEVELOPMENT BANK (THE "BANK") AS AN ENTERPRISE PROJECT; AND PROVIDING AN EFFECTIVE DATE.

**DEVELOPMENT SERVICES**

31. Building Official Thorpe gave an overview of this item.

Interim City Secretary Turner read the caption of Ordinance No. 8796.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8796 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8796

AN ORDINANCE AMENDING THE FIRE DISTRICT SO AS TO DELETE THEREFROM LOT 6, BLOCK 165, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY DESCRIBED AS 710 SOUTH ATLANTA STREET); DIRECTING THE BUILDING OFFICIAL TO AMEND THE FIRE DISTRICT MAP; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE.

32. Senior Planner Compton gave an overview of the item noting that staff recommended approval.

Interim City Secretary Turner read the caption of Ordinance No. 8797.

Caroline Englestad, property owner, gave an overview of what she and her husband have done to the property and the obstacles they have encountered.

Following discussion, Council Member Dufford moved approval of the first of two readings of the ordinance in accordance with the Charter of the City of Midland; seconded by Council Member Trost. Following discussion, the maker and seconder of the motion agreed to withdraw the motion on the floor.

Council Member James moved approval of the first of two readings of Ordinance No. 8797 in accordance with the Charter of the City of Midland with the following

amendments: allow a driveway exception that includes a shared driveway with the adjoining property, in the event the property owners do not agree to share, driveway access will not be allowed on New Jersey Avenue; set the price of the property at \$1; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8797

AN ORDINANCE VACATING AND ABANDONING A 0.5-ACRE PORTION OF HARRISON STREET RIGHT-OF-WAY ADJACENT TO THE EAST SIDE OF LOTS 1-3, BLOCK 19, REPLAT OF SOUTH PARK ADDITION, AND A 715.5 SQUARE FOOT PORTION OF NEW JERSEY AVENUE RIGHT-OF-WAY AT THE HARRISON STREET INTERSECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON HARRISON STREET SOUTH OF NEW JERSEY AVENUE); AND NOT ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$2,474.50; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE INTERIM CITY SECRETARY.

**RECESS/EXECUTIVE SESSION**

38. Mayor Perry announced that the meeting would be recessed to the conference room for lunch.
39. 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 Negotiation**

**Section 551.074 - Personnel Matters**

Mayor Perry recessed the meeting to Executive Session at 12:08 p.m. The entire Council met in executive session until 1:15 p.m.

Mayor Perry reconvened the meeting in the Council Chamber at 1:21 p.m., with the same members present.

**MISCELLANEOUS**

33. Council Member Dufford moved to defer the resolution approving a second amendment to the Economic Development Agreement between the Midland Development Corporation and Trace Engines, L.P., to a future meeting; seconded by Council Member Trost. The motion carried by the following vote: AYE: Dufford, Morales, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: Sparks. ABSENT: None.
34. Council Member Dufford moved to adopt Resolution No. 2010-092; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-092

RESOLUTION APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SENTRY PUMPING UNITS INTERNATIONAL, INC., AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE.

35. Council Member Dufford moved to adopt Resolution No. 2010-93; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-93

RESOLUTION APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND NATURAL GAS SERVICES GROUP, INC., AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE.

36. Council Member Dufford moved to adopt Resolution No. 2010-94; seconded by Council Member Trost. The motion carried by the following vote: AYE: Dufford, Morales,

Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-94

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND APACHE CORPORATION, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE.

37. Consideration of appointments to various Boards and Commissions.

Council Member Dufford nominated Scott Lovett and P. Lourcey Sams to the Managed Competition Committee; seconded by Council Member Morales. The motion carried by the following vote: AYE: Dufford, Morales, Sparks, Hailey, Trost, James, and Perry. NAY: None. ABSTAIN: None. ABSENT: None.

Council Member Sparks nominated Don Eubank to the Oil and Gas Advisory Committee; seconded by Council Member Morales. The motion carried by the following vote. AYE: Dufford, Morales, Sparks, Hailey, Trost, and Perry. NAY: James. ABSTAIN: None. ABSENT: None.

All of the business at hand having been completed, the meeting adjourned at 1:41 p.m.

PASSED AND APPROVED the 27<sup>th</sup> day of April, 2010.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, Interim City Secretary