

PLANO CITY COUNCIL
February 12, 2007

COUNCIL MEMBERS

Pat Evans, Mayor
Scott Johnson, Mayor Pro Tem
Sally Magnuson, Deputy Mayor Pro Tem
Shep Stahel
Jean Callison
Loretta L. Ellerbe
Harry LaRosiliere
Lee Dunlap

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Executive Director
Bruce Glasscock, Executive Director
Rod Hogan, Executive Director
Diane C. Wetherbee, City Attorney
Elaine Bealke, City Secretary

Mayor Evans convened the Council into the Regular Session directly from the Preliminary Open Meeting on Monday, February 12, 2007, at 7:00 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council members were present with the exception of Deputy Mayor Pro Tem Magnuson.

The invocation was led by Pastor Barry Gin of the Plano Chinese Alliance Church.

The Pledge of Allegiance was led by Junior Girl Scout Troop 437 of Andrews and Wells Elementary Schools.

Mayor Evans made a presentation to The Family of Ben Thomas and presented a proclamation for Library Lovers' Month.

Mayor Evans administered oaths of office to incoming Senior Citizens Advisory Board member Kevin Yarrow and Building Standards Commission member Ann L. Nurre.

COMMENTS OF PUBLIC INTEREST

Mary Compton, citizen of the City, expressed disappointment that heritage designation for the Haggard Addition did not pass. She spoke to the efforts of the neighborhood, reference to the area in the City's Preservation Plan and approval by both the Heritage Commission and Planning and Zoning Commission. Ms. Compton requested reconsideration so that new information could be provided to the Council and discussed at a future meeting. Louise Costa, citizen of the City, spoke to the heritage designation for the Haggard Addition as a way to preserve the history of Plano.

Naomi Goolsbee, citizen of the City, stated concern that the residents of the Haggard Addition will not be allowed to present more information and spoke to the possible effect of rental properties, and “tear downs” that might change the look of the area. She spoke to reference in the Preservation Plan, to the area representing the start of Plano’s transition from a farming community to a city and requested reconsideration. Eric Malm, citizen of the City, stated disappointment in the decision not to approve heritage designation for the Haggard Addition. He spoke to the unique nature of the neighborhood, the impact of possible “tear downs,” and to preserving the area.

BOARD AND COMMISSION REPORT

Animal Shelter Advisory Committee Chair Roger Bolin advised that in 2006 from 6,000 to 7,000 animals were adopted from the shelter and spoke regarding the kick-off of a Feral Friends Program to assist in managing the various feral cat colonies in the City. He spoke to proposed revisions to Chapter 4 Animal Regulations and advised that in the near future the board will review a plan to address animal issues related to emergency evacuations. Health Director Collins responded to Council Member Stahel, stating that in the coming year rather than filling two manager’s positions, the hiring of a veterinarian will be recommended in tandem with the opening of the new shelter addition.

CONSENT AGENDA

Upon the request of Council Member Stahel, Consent Agenda Item “N” was removed for individual consideration due to a possible conflict of interest.

Upon the request of citizen Tony Mauro, Consent Agenda Item “W” was removed for individual consideration.

Upon a motion made by Mayor Pro Tem Johnson and seconded by Council Member Ellerbe, the Council voted 7-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes [Consent Agenda “A”]

January 22, 2007
February 1, 2007

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

Bid No. 2007-53-C for an annual fixed price contract for Public Works Mowing and Landscaping Services to Cardinal Home Lawn Care in the estimated annual amount of \$64,473. This item will establish a one year contract with three City optional one year renewals for mowing and landscape services along floodway drainage easements and water storage facilities throughout the City of Plano. [Consent Agenda “B”] (See Exhibit “A”)

Bid No. 2007-57-C to establish an annual fixed price contract for Fire Hydrant and Water Line Repair Parts – Group 4 to H.D. Supply Waterworks in the estimated amount of \$97,992. This will establish an annual fixed price contract with three optional one-year renewals. [Consent Agenda “C”] (See Exhibit “B”)

Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).

To authorize the purchase of infrastructure switches in an amount not to exceed \$250,000 from Internetwork Experts, Inc. through the Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (INX DIR-SDD-239) [Consent Agenda “D”]

To approve the purchase of material testing services for the Avenue P, Park to 18th Street project in the amount of \$38,909 from Kleinfelder, Inc. through an existing contract/agreement and authorizing the City Manager to execute all necessary documents. (Contract #2005-265-D). [Consent Agenda “E”]

To approve the purchase of material testing services for the McDermott Road Widening from Custer Road to Coit Road project in the amount of \$27,979 from TEAM Consultants, Inc. through an existing contract/agreement and authorizing the City Manager to execute all necessary documents. (Contract #2005-265-D) [Consent Agenda “F”]

To approve the purchase of labor and materials for the Technology Department Computer Room Modification and Expansion project, in the amount of \$979,417, from Centennial Contractors Enterprises, Inc. through an existing contract/agreement with Texas Cooperative Purchasing Network (TCPN), and authorizing the City Manager to execute all necessary documents. (TCPN Vendor Contract No. R4538). [Consent Agenda “G”]

To approve the purchase of two Chevrolet One Ton Extended Cargo Vans in the amount of \$46,384 from Caldwell Country Chevrolet through an existing contract/agreement with HGAC Cooperative Purchase Program, and authorizing the City Manager to execute all necessary documents. (#VE03-06) The vehicles are for Facility Services and the Plano Public Library System. [Consent Agenda “H”]

To approve the purchase of eleven Chevrolet Cab Pick-Up's in the amount of \$244,650 from Caldwell Country Chevrolet through an existing contract/agreement with HGAC Cooperative Purchase Program, and authorizing the City Manager to execute all necessary documents. (#VE03-06) The vehicles are for Warehouse Operations, Customer & Utility Services, Environmental Health, Police, Fire, Backflow Operations and Park Field Services. [Consent Agenda "I"]

To approve the purchase of one Mack Granite 14 yard Dump Truck in the amount of \$111,550 from Dallas Mack Sales through an existing contract/agreement with Texas Association School Buyboard Purchase Program, and authorizing the City Manager to execute all necessary documents. (#208-04) This is a scheduled replacement for Utility District #3. [Consent Agenda "J"]

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

To approve an Engineering Services Contract by and between the City and GSWW, Inc. in the amount of \$88,915 for design of intersection improvements – Jupiter Road, Park Boulevard, Parker Road & Independence Parkway and authorizing the City Manager to execute all necessary documents. This project includes improvements at the following five intersections: Spring Creek Parkway at Jupiter Road; Park Boulevard at Enterprise Drive; Park Boulevard at Custer Road; Parker Road at Marsh Lane; and Parkhaven Drive at Independence Parkway. [Consent Agenda "K"]

To approve an Engineering Services Contract by and between the City and Dal-Tech Engineering, Inc. in the amount of \$81,690 for Alma Road Widening from Spicewood Drive to Hedgcoxe Road and authorizing the City Manager to execute all necessary documents. [Consent Agenda "L"]

To approve an Engineering Services Contract by and between the City and Dunaway Associates, L.P. in the amount of \$63,615 for Screening Wall Replacement – Cloisters project and authorizing the City Manager to execute all necessary documents. [Consent Agenda "M"]

Change Order: (Change to current City of Plano contract allowable under State law)

To Wiginton Hooker Jeffrey, P.C., increasing the Professional Services Contract by \$93,725 for Fire Station No. 12 and Emergency Operations Center and Storage Complex, providing research, design services, specifications and documentation required to submit the facilities for LEED Certification, Contract Modification No. 1. [Consent Agenda "O"]

To Core Construction increasing the contract by \$105,557 for the Tom Muehlenbeck Center project, Change Order No.1 (Bid No. 2006-39-B). [Consent Agenda "P"]

Adoption of Resolutions

Resolution No. 2007-2-1(R): To approve a Licensing Agreement by and between the City of Plano and the North Central Texas Council of Governments; providing terms and conditions for the purchase of digital aerial photography, elevation contours, and planimetrics in the amount of \$51,983; authorizing execution of the License Agreement by the City Manager; and providing an effective date. [Consent Agenda “Q”]

Resolution No. 2007-2-2(R): To approve and authorize the refunds of property tax overpayments; and providing an effective date. [Consent Agenda “R”]

Resolution No. 2007-2-3(R): To approve the first amendment to the contract with David McCall of Gay, McCall, Isaacks, Gordon, May & Roberts, P.C. to allow the collection of taxes on tangible personal property that become delinquent on or after February 1, 2007 as permitted by Section 33.11, Tax Code; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda “S”]

Resolution No. 2007-2-4(R): To authorize the purchase of specialized online downloadable audio books for Plano Public Library System in the amount of \$31,000 from OCLC/NetLibrary through their distribution agreement with Recorded Books, LLC, a sole source supplier of such materials; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date. [Consent Agenda “T”]

Resolution No. 2007-2-5(R): To approve the purchase of a Technical Service Support Agreement for the LifePak 10 and LifePak 12 defibrillator equipment in the amount of \$212,151 from Medtronic Emergency Response Systems, Inc. the sole source vendor of such equipment and services; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date. [Consent Agenda “U”]

Adoption of Ordinances

Ordinance No. 2007-2-6: To approve the terms and conditions of a Boundary Adjustment Agreement by and between the City of Plano, Texas and the City of Richardson, Texas to set the future City limit boundaries and to adjust existing boundaries; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda “V”]

Ordinance No. 2007-2-7: To grant a waiver to increase the maximum allowable flagpole height from fifty feet to one hundred thirty feet at 600 Accent Drive and at 8700 Preston Road in the City of Plano; and providing an effective date. [Consent Agenda “X”]

END OF CONSENT

Due to a possible conflict of interest, Council Member Stahel stepped down from the bench on the following item.

To approve a contract by and between the City and Remote Services, Inc. in the amount of \$109,200 for Technical Consultant for JDEdwards EnterpriseOne ERP System, and authorizing the City Manager to execute all necessary documents (RFQ No. 2007-14-C) The term of the contract will be one year with three City optional one-year renewals. [Consent Agenda “N”]

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve a contract by and between the City and Remote Services, Inc. in the amount of \$109,200 for Technical Consultant for JDEdwards EnterpriseOne ERP System, and authorizing the City Manager to execute all necessary documents.

Council Member Stahel returned to his place at the bench.

To amend Ordinance No. 2006-5-9 as codified in Article VIII. Special Events of Chapter 11 Licenses and Business Regulations of the Code of Ordinances of the City of Plano by deleting the exception of funeral processions and official activities of governmental agencies from the application of this ordinance; providing for notification of adjacent property owners along a proposed parade route; and other related matters; providing a repealer clause, a savings clause; a severability clause and providing an effective date. [Consent Agenda “W”]

Citizen Tony Mauro, representing the Catholic Community of St. Elizabeth Ann Seton, stated concern that this item would impose the same requirements for a parade or demonstration on a funeral procession. He spoke to issues of timing, permits and notification. City Attorney Wetherbee spoke regarding the Police Department’s perspective and enforcement. She stated that the ordinance describes parades as consisting of 50 or more people, vehicles or conveyances where the purpose is to attract the attention of the public and close roadways and to funerals not being treated as defined. Ms. Wetherbee spoke to considering the size and purpose of an event with a funeral procession being an orderly way to get the attendees from the service to the gravesite and not meant to close traffic. She spoke to tabling the item so that wording might be clarified.

Upon a motion made by Council Member Ellerbe and seconded by Council Member LaRosiliere, the Council voted 7-0 to table the request to amend Ordinance No. 2006-5-9 as codified in Article VIII. Special Events of Chapter 11 Licenses and Business Regulations of the Code of Ordinances of the City of Plano by deleting the exception of funeral processions and official activities of governmental agencies from the application of this ordinance; providing for notification of adjacent property owners along a proposed parade route; and other related matters; providing a repealer clause, a savings clause; a severability clause and providing an effective date until the February 26, 2007 meeting.

The Council resumed discussion of the Preliminary Open Meeting at this time.

Discussion and Direction Regarding Proposed Smokefree Ordinance

Director of Health Collins provided statistics related to deaths caused by tobacco use and secondhand smoke. He spoke to the development of a smokefree ordinance to prohibit smoking in enclosed public areas, schools and the workplace and the formation of a committee to review and provide input. Mr. Collins advised that studies indicate there is no evidence of decreased restaurant revenues after implementation of clean air ordinances in various cities. He spoke to the proposed ordinance being guided with the purpose of improving and protecting public health by prohibiting smoking in public places and places of employment, enabling the right of nonsmokers to breathe smokefree air and recognizing that this right has priority over the choice to smoke. Mr. Collins spoke to a revised version of the committee document making exceptions for establishments that have purchased, leased or rented smoking accommodation equipment in the last five years by allowing a "phase-in" approach, allowing exceptions for a percentage of hotel/motel or long-term residence rentals, reducing the distance from doors/windows from 25 to 15 feet and modifying enforcement.

Mr. Collins advised that the committee recommended not allowing exceptions to accommodate recently installed ventilation equipment because the ordinance is intended to protect public health and he spoke to the risks of secondhand smoke for foodservice workers. Mr. Collins further advised that the committee considered the comments from stakeholders who prefer a level playing field rather than phased-in accommodation for some establishments and spoke to the equipment being subject to depreciation.

Mr. Collins advised that the committee will work on policy language to state which duties an owner, operator or person in charge will be responsible for (posting signs, removing smoking paraphernalia and ejecting patrons that smoke after appropriate warning). He spoke to consideration of concerns related to the regulation of private employment and unforeseen consequences of policies in the ordinance regarding education and posting of notice.

Mr. Collins stated that with regard to hotel/motel room compliance, the consensus of the committee was to provide a 100 percent smokefree environment in all hotel/motel rooms citing employee health concerns. He stated that there may need to be some accommodation based on property interest laws and that language could be amended to allow a percentage of rooms to be designated as smoking.

Mr. Collins advised that the committee requested specific fines and culpability be incorporated into the ordinance to establish consequences. He spoke to the introduction of Senate Bill 368 and the options of moving forward in working with the Council, committee and community in finalizing the proposed draft or tracking SB 368 through the session. Mr. Collins spoke to conducting Public Hearings should the Council decide to move forward.

Mr. Collins responded to the Council, advising that state law would preempt ordinances and that the City could be more rigorous than state law. City Attorney Wetherbee advised that if state law does not cover an area and is not comprehensive, cities can supplement with their own regulations.

Mr. Collins spoke to the uncertainty of the state bill's final language at this time and Council Member Ellerbe spoke to addressing the issue as it applies to Plano rather than depending on passage of the state bill.

Mr. Collins responded to Council Member Stahel stating that restaurateur committee members indicated preference for a level playing field with no accommodation for ventilation equipment and to the preference of the new Commandant of the Veterans of Foreign Wars (VFW) to make their facilities smokefree. He stated that under the proposed ordinance the VFW and American Legion would be considered private places if not open to the public, but that consideration should be given if they have employees.

Mayor Evans spoke to the issue of enforcement and penalizing managers for the behavior of their customers and Mr. Collins spoke to incorporating some provisions in the ordinance to address cases where management may facilitate smokers. Ms. Wetherbee spoke to this being a situation where restaurants are being affected by the conduct of a third party and to the need for more discussion of this issue. She spoke to concerns regarding enforcement and to clarifying the duties of owner/operators. Mayor Evans spoke to consideration of the "phase-in" period for restaurants that have invested in ventilation systems within the last five years. Mr. Collins spoke to stakeholders' first preference for state-wide legislation addressing smokefree restaurants followed by the desire for a level playing field. He advised that while not all locations may be in favor, the committee considered public/employee health, the depreciation of equipment at any time and the request for a level playing field as reasons to recommend there be no phase-in. Ms. Wetherbee spoke regarding hotel/motel rooms and issues of enforcement and Mayor Evans spoke to the possibility of designating a percentage of the rooms for smoking.

Mayor Evans requested Staff bring the issues back to the committee, balance these concerns and consider possible burdens on managers. Council Member Ellerbe spoke to clarifying the responsibilities of management and in support of not including a phase-in period. By a show of hands the Council expressed their support for moving forward with the City's ordinance and holding Public Hearings.

Mr. Collins responded to Council Member Stahel stating that the ordinance as presented includes all businesses in the City. Ms. Wetherbee spoke to municipal court not becoming the repository for disputes with employees over smoking issues and to discouraging the retaliation issue from becoming a criminal matter.

City Manager Muehlenbeck spoke to the item going back to the committee who will hold one/two Public Hearings to receive input then bring a recommendation back to the Council. He spoke to monitoring the progress of the senate bill, the Council holding Public Hearings for additional input and addressing policy issues with a final ordinance to follow.

Mayor Evans spoke to receiving more information on those restaurants with recently installed ventilation equipment and Council Member Dunlap spoke to looking into the implications for home-based businesses that have paid employees.

Mayor Evans advised that Public Hearings will be scheduled and asked those in attendance to provide their input. Juergen Mahneke of the Bavarian Grill stated concern regarding penalties that may be imposed on restaurants. He stated that patrons will be unclear on where they will be allowed to smoke and requested guidance be provided in the ordinance. Bryan Capps of Austin Avenue Grill and Sports Bar spoke in support of the smokefree ordinance and requested consideration of where smoking will be allowed. City Manager Muehlenbeck spoke to the City's previous efforts to provide smokefree establishments. Gus Cristas of Greek Isles Restaurant stated concern regarding managers being fined for the behavior of patrons. Tim Gabel, citizen of the City, stated concern regarding fines imposed on business owners, spoke regarding choice and there being establishments in the City that are non-smoking. Mr. Mahneke stated support for 100% non-smoking indoors but requested consideration of designating an area where smoking is permitted.

Public Hearing and adoption of Ordinance No. 2007-2-8 as requested in Zoning Case 2006-35 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 3.0± acres located on the north side of Tradition Trail, 700± feet east of Ohio Drive in the City of Plano, Collin County, Texas, from Planned Development-426-Retail/General Office to Planned Development-131-Light Industrial-1; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: H.H.P.L. Limited Remanded to the Planning and Zoning Commission 01-22-07 [Regular Agenda "1"]

Director of Planning Jarrell spoke to duplicate notices on this item and advised that the Planning and Zoning Commission recommended approval as submitted. She spoke to the request being an expansion of an existing planned development to allow for an automotive towing company. Ms. Jarrell responded to Council Member Dunlap, stating that Staff will address issues of access and signage as they work through the site plan and platting processes.

Mayor Evans opened the Public Hearing. Don Pascal, Jr., representing the applicant, stated he was aware of the regulations related to this lot and spoke regarding plans for a contract towing company. He spoke to the uses of surrounding properties and responded to Mayor Pro Tem Johnson regarding the selling of this site and the lot to its south. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Dunlap and seconded by Council Member LaRosiliere, the Council voted 7-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 3.0± acres located on the north side of Tradition Trail, 700± feet east of Ohio Drive in the City of Plano, Collin County, Texas, from Planned Development-426-Retail/General Office to Planned Development-131-Light Industrial-1 as requested in Zoning Case 2006-35 and as recommended by the Planning and Zoning Commission; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2007-2-8.

Ordinance No. 2007-2-9: To repeal Sec. 15-24(10) of Chapter 15, Parks and Recreation, Article II, Parks and Recreation Planning Board of the City of Plano Code of Ordinances; amending Chapter 2, Administration of the City of Plano Code of Ordinances by adding Section 2-13 to provide for the naming/renaming of City facilities, structures and improvements in the City of Plano; providing repealing, savings, and severability clauses; and providing an effective date. [Regular Agenda "2"]

City Manager Muehlenbeck advised that currently the Parks and Recreation Planning Board has some naming rights and Mayor Pro Tem Johnson spoke to providing for Council authority for the naming and/or renaming of all facilities, structures and improvements to afford consistency.

Upon a motion made by Mayor Pro Tem Johnson and seconded by Council Member Dunlap, the Council voted 7-0 to repeal Sec. 15-24(10) of Chapter 15, Parks and Recreation, Article II, Parks and Recreation Planning Board of the City of Plano Code of Ordinances; amending Chapter 2, Administration of the City of Plano Code of Ordinances by adding Section 2-13 to provide for the naming/renaming of City facilities, structures and improvements in the City of Plano; providing repealing, savings, and severability clauses; and providing an effective date; and further to adopt Ordinance No. 2007-2-9.

Resolution No. 2007-2-10(R): To support legislation that urges the Texas Commission on Environmental Quality to impose a 180-day moratorium on the permitting or further processing of current permit applications for pulverized coal-fired power plants; authorizing its execution by the City Manager and providing an effective date. [Regular Agenda "3"]

Mayor Evans spoke to the proposed resolution being consistent with membership in the Clean Air Coalition of Cities, to the fast-tracking of TXU coal plants and to consideration of the impact of each facility on the quality of air. She spoke to the North Texas Area being out of compliance with little hope of meeting the eight-hour EPA requirements. Mayor Evans spoke to issues related to wind direction and TXU models and to addressing these through court and Texas Commission on Environmental Quality hearings scheduled to begin next week. Mayor Evans spoke to approving a resolution supporting a moratorium on further permitting until issues are considered and asking that each coal plant be considered cumulatively, not independently, with regard to the resultant damage. Council Member Ellerbe spoke to receiving information regarding the number of gas-fired plants being closed in the Houston area.

Upon a motion made by Council Member Stahel and seconded by Mayor Pro Tem Johnson, the Council voted 7-0- to support legislation that urges the Texas Commission on Environmental Quality to impose a 180-day moratorium on the permitting or further processing of current permit applications for pulverized coal-fired power plants; authorizing its execution by the City Manager and providing an effective date; and further to adopt Resolution No. 2007-2-10(R).

City Manager Muehlenbeck spoke regarding the vacant retail sites located at 600 Accent Drive and 8700 Preston Road that will be occupied as a result of action on this evening's agenda to allow an increase in flagpole height.

There being no further discussion, Mayor Evans adjourned the meeting at 9:00 p.m.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, City Secretary