

**PLANO CITY COUNCIL**  
**March 26, 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  
Diane Zucco, Assistant City Secretary

Mayor Evans convened the Council into the Regular Session on Monday, March 26, 2007, at 7:05 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Sr. Pastor Al Krummenacher of Grace Presbyterian Church.

The Pledge of Allegiance was led by Brownie Troop 1286 from Mathews Elementary School.

Mayor Evans read proclamations recognizing Keep Plano Beautiful – Great American Cleanup; Plano, Texas – Relay for Life Community; and Sexual Assault Awareness and Prevention Month – April, 2007.

Mayor Evans presented a certificate of appreciation to Danny Morris for his service on the Building Standards Commission.

### **COMMENTS OF PUBLIC INTEREST**

Jim Johnstone, citizen of the City, stated concern that the average sprinkler system cannot be set to correspond to the days and times watering is now permitted. He spoke to watering at the same time for shorter periods on allowed days. Mayor Evans spoke to setting systems on manual and advised that the Council was not posted for discussion of the item.

### **BOARD AND COMMISSION REPORT**

Cultural Affairs Commission Vice Chair Alex Johnson spoke to the board's ethics training, annual review/revision of grant guidelines and applications, grant workshops for applicants, presentations and review of applications and presentation of recommendations to the Council. He spoke to review and recommendations of the proposal for delivery of services for Plano's Annual Summer Arts Workshop. Mr. Johnson reviewed the board's schedule and spoke to their update of the mission statement and goals. He advised that last year there were 20 small and major grants and that the Council awarded \$601,070 and six special events programs in the amount of \$249,858. Mr. Johnson thanked the Council for their support of cultural arts and spoke to the board providing assistance to diverse groups of citizens and organizations who provide diversity in culture for Plano citizens. Deputy Mayor Pro Tem Magnuson spoke regarding the presentations made by applicants and Mayor Evans thanked that group for their intense schedule and devotion.

### **CONSENT AGENDA**

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

Upon the request of Council Member Dunlap, Consent Agenda Item "E" was removed for individual consideration.

Upon a motion made by Council Member Ellerbe and seconded by Council Member Callison, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

#### **Approval of Expenditures**

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

**Bid No. 2007-90-B** for Wyatt North Addition to Tri-Con Services, Inc., in the amount of \$1,780,914. The project consists of reconstruction of the water lines, street pavement and sidewalks on Avenue N, Felix Drive, Francis Lane and Lucas Terrace in the Wyatt North Subdivision. [Consent Agenda Item (A)] (See Exhibit "A")

**Bid No. 2007-086-B** for Recycling Program Bins and Wastebaskets to Midpoint International Inc., Pyramid School Products, JanPak Supply, Recy-Cal Supply and Corporate Express in the amount of \$35,157. [Consent Agenda Item (B)] (See Exhibit "B")

**Bid No. 2007-89-B** for fixed price contract for Uninterruptible Power Supply to Paradigm Traffic Systems, Inc. (Items 1, 2, 3, 5, and 6) and Consolidated Traffic Controls, Inc. (Item 4) in the estimated annual amount of \$64,890 to power traffic signals during power outages at nine locations in the EDS and Legacy Town Center area. The contract will be for a period of one year from date of contract signature with renewal options under the same terms and conditions. [Consent Agenda Item (C)] (See Exhibit "C")

### **Adoption of Ordinances**

**Ordinance No. 2007-3-17:** To grant a permit to InterCool, Inc. to repair an existing water well at 2305 Bridgeview Lane, Plano, Texas to provide water to existing private lakes located adjacent to Winding Hollow Drive, just north of West Park Boulevard; authorizing the City Manager to execute any and all documents in connection therewith; and providing an effective date. [Consent Agenda Item (F)]

**Ordinance No. 2007-3-18:** To transfer the sum of \$90,727 from the General Fund Unappropriated Fund Balance to the General Fund Operating Appropriation for Fiscal Year 2006-07 for the purpose of providing funding for the production of a series of five concerts at the Amphitheater at Oak Point Park; amending the budget of the City and Ordinance 2006-9-9, as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date. [Consent Agenda Item (G)]

### **END OF CONSENT**

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

**Approval of Contract:** To approve a contract by and between Museumscapes, LLC and the City of Plano in the amount of \$74,560 for the design, development and installation of interactive software for the Sustainability & Environmental Services Department. [Consent Agenda Item (D)]

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member LaRosiliere, the Council voted 7-0 to approve a contract by and between Museumscapes, LLC and the City of Plano in the amount of \$74,560 for the design, development and installation of interactive software for the Sustainability & Environmental Services Department.

Council Member Stahel resumed his seat at the bench.

**Resolution No. 2007-3-19(R):** To endorse certain legislative changes to enhance the competitive electric market supported by Cities Aggregation Power Project, Inc., and providing an effective date. [Consent Agenda Item (E)]

Director of Customer and Utility Services Israelson spoke to Plano being a member city of the Cities Aggregation Power Project, Inc. and actively working with consultants and legal advisors to educate legislators on issues and problems that have resulted from the deregulation of the market. He spoke to meetings attended by Mayor Evans and Mayor Pro Tem Johnson. Council Member Dunlap spoke to advising the public how hard elected officials and Staff work to be sure the voices of Plano citizens are heard on both state and national levels.

Upon a motion made by Council Member Stahel and seconded by Council Member Callison, the Council voted 8-0 to endorse certain legislative changes to enhance the competitive electric market supported by Cities Aggregation Power Project, Inc., and providing an effective date; and further to adopt Resolution No. 2007-3-19(R).

**Public Hearing** – To solicit input from the public pertaining to the proposed smoking ordinance, which will replace the current ordinance. [Regular Agenda Item (1)]

Director of Health Collins advised that the proposed ordinance is intended to improve the public's health by eliminating exposure to second-hand smoke in all indoor enclosed areas and public places and includes restaurants, retail stores, businesses, places of employment, sports venues and other common areas to which the public is commonly invited or in which the public is permitted. He stated that under this ordinance, smoking will not be regulated in private residences unless they are used for child care, adult day care or health care; personal automobiles; stand-alone retail tobacco stores; 10% or less of hotel/motel rooms or outdoor places of employment. Mr. Collins spoke to the posting of signs at building entrances and enforcement by the Health Department. He spoke to fines for non-compliance of up to \$500 for each violation directed primarily at those who smoke, but stated that Section 14-70 enables Staff to address business owners who do not comply with the actions listed in the ordinance. Mr. Collins spoke to conducting an educational initiative, recognized the committee for their efforts and stated the proposed implementation date of June 1, 2007.

Mayor Evans opened the Public Hearing. Andy Essary, citizen of the City, thanked Staff and the committee for their work and spoke to Plano being at the vanguard of a national movement toward health and away from smoking. He spoke to listening to ideas and doing the right thing. Mike Brignole, owner of the End Zone in Plano, spoke to the impact on businesses and the marketplace determining what will or will not succeed. He stated that this would impose the will of some on everyone and spoke to the filtration systems currently required. Mr. Brignole responded to Mayor Evans that he has had his filtration system for three years.

Kim Kamm, Regional Director of Government Relations for the American Cancer Society, spoke to the ordinance being an important public health issue. She spoke to the Surgeon General's report that second-hand smoke is dangerous and stated the society's belief in the right to breathe clean air. Ms. Kamm spoke to 80% of the Texas population being non-smoking, to an American Society of Heating/Refrigeration and Air Conditioning Engineers report stating that the only way to safeguard the public is not to allow smoking in public buildings, and commended the Council for consideration and Staff for being proactive. Kim Wilcox, American Cancer Society volunteer and Co-Chair of Plano's Relay for Life, spoke to the effect of smoke on her personally and to the right of children to breathe clean air. Zeno H. Lockett, citizen of the City, spoke to not over controlling people and to setting aside areas designated for smokers. John D. Norsworthy, citizen of the City, spoke to individuals having a choice and to the City not deciding their rights. He spoke to interpretation of data and scientific information and to not changing the ordinance.

Robert Terrill, citizen of the City and committee member, spoke to the ordinance protecting the health of the public and employees who do not have a choice. He spoke to the ordinance providing a level playing field and in favor of passage. O.B. Barsh, new restaurant/pub owner in Plano, spoke to selecting his location based on the demographics and economic stature of the City, monies spent on filtration systems/barriers, the state's possible future consideration of restrictions and employees having a choice of where to work and choosing the smoking section where there are more customers. He spoke to driving revenue to other cities and to offering a choice to customers and employees. Brent Hanson, of Buffalo Wild Wings in Plano, spoke to the lack of customers when the establishment was non-smoking, the purchase and effectiveness of filtration systems, employees choosing where to work, and the possible loss of revenue to other cities. Tim Kelly, of Kelly's Eastside in Plano, spoke to the negative effect the proposal would have on his patio area, the makeup of the committee, the right to choose whether to smoke or not smoke and monies invested in his establishment. Danny Morris, citizen of the City, spoke to the dangers of smoking and the effectiveness of some of the filtration systems in current Plano restaurants. No one else spoke either for or against the request. The Public Hearing was closed.

Mr. Collins reviewed the membership of the committee including two physicians, representatives from the American Heart Association, American Lung Association and American Cancer Society, the Greater Dallas Restaurant Association, one local restaurant owner, two citizens and a representative from one large corporation. Mayor Evans requested Staff provide information regarding filtration system enforcement including the number of incidents received on an annual basis, how many are related to equipment and repairs required. Mr. Collins spoke to systems not being turned on or having clogged filters and to data showing the low impact a clean air ordinance would have on establishments, revenues or taxes. He spoke to a study indicating that there is no system capable of 100% filtration of second-hand smoke. Mayor Evans requested Staff provide the Council these reports.

Mr. Collins responded to Council Member Ellerbe, stating that in an area with multiple businesses, each one is responsible for posting a sign at their entrance and that there is a caveat to include 25 feet from operable windows/vents, which then could be the responsibility of the property owner. He stated that the movement of smoking employees to in front of other businesses would be prohibited and addressed on a complaint basis by contacting the Health Department. Mr. Collins responded to Council Member Stahel, stating that there are no hard statistics regarding the practices of major employees, but feedback indicates that most large businesses already have a smoke-free policy. He spoke to including members of the Chamber of Commerce and Plano Economic Development Board so they might gain feedback and provide information. Mayor Evans spoke to establishments in Plano being restaurants rather than bars based on food service requirements.

Mr. Collins responded to Mayor Pro Tem Johnson, stating that with regard to considering allowing restaurants to be either smoking or non-smoking, the committee looked at the employees as a component of public health in those situations. He spoke to lawsuits being filed against employers for the effects of exposure to smoke over long periods of time and to other cities in the area that are considering or have already taken action. Mr. Collins responded to Council Member Stahel, stating that smoking is not prohibited in outdoor places of employment and that there may be separate policies in some instances. He spoke to the restriction on private residences when they are used as child care, adult day care or health care facilities. Mr. Collins spoke to the Downtown and Legacy Town Center areas being virtually smoke-free based on the large number of doors and openings and the distance requirement. He spoke to responsibility of property owners in parking lots and to Health Specialists assisting in determining parameters, signage or ways to address the issues.

Mayor Evans opened the floor for additional comments. Mr. Lockett spoke to smoke getting “locked up” at a level where people are breathing and to the possibility a change in ventilation systems would make a difference in restaurants. Mr. Norsworthy spoke to reviewing studies disproving the effect of second-hand smoke. Council Member Ellerbe spoke regarding the Surgeon General’s report which advised that second-hand smoke is hazardous to health. Mr. Barsh of Bullwinkle’s Bistro and Pub, spoke to there being only one restaurant owner on the committee, customers coming to Plano from cities that do not allow smoking and to patrons going elsewhere. Mr. Brignole spoke to the tabling of the issue in other cities and stated concern that business owners may be ticketed for those smoking within the 25 foot limit. City Attorney Wetherbee spoke to consideration of enforcement issues.

Mayor Evans spoke to another Public Hearing and consideration of the item on April 9, 2007.

**Presentation of the 2006-07 Status Report and Three-Year Financial Forecast to City Council.** [Regular Agenda Item (2)]

Budget Director Rhodes stated that every annual budget adopted by the City Council is statutorily required to be balanced and that fund deficits are assumed to be rectified in the year projected. She spoke to projections that the General Fund will end with 30 days fund balance in 2007-08, to a fund deficit the following two years and to the Budget Contingency Plan to address this should it come to fruition. Ms. Rhodes spoke to an estimated 2% increase in property values in 2008 and new property growth in the amount of \$550 million and to increases in property values of 1.5% in 2009 and 1% in 2010. She spoke to the tax rate of 47.35 cents per \$100 of assessed property value with two cents going to the Economic Development Incentive Fund. Ms. Rhodes spoke to the property tax levels of other cities and to Plano's being the lowest when calculating the actual effective rate with the homestead exemption.

Ms. Rhodes advised regarding the 15.8% increase in sales tax revenue in 2005-06 and to running 2.5% more for this year than last. She spoke to increases coming from manufacturing, wholesaling and information services companies and stated concern that should there be a recession, these would be the first businesses impacted. Ms. Rhodes spoke to forecasting a decrease of 1.5% for 2007-08 and a constant level for the following years. She spoke to Building and Development Revenues running at \$4.7 million for 2006-07 followed by a 15% reduction then remaining constant.

Ms. Rhodes spoke to 2007-08 salaries projected at a 3% increase with no future increases projected at this time. She spoke to determining future increases during each year's consideration. Ms. Rhodes stated that attrition has been included at 5% for the General Fund and 1% for all other funds, health insurance is projected to increase 10% to set aside reserves for GASB 45, and that funding for the Economic Development Incentive Program is projected to remain at \$6 million for 2007-08 then drop to the two cents on the tax rate for the remainder of the forecast at \$4.9 million for 2008-09 and \$5.1 million for 2009-10. She spoke to Operation and Maintenance (O&M) expenditures projected at an inflation rate of 2.5%, inclusion of a 5% reduction in O&M for 2008-09 and 2009-10, and an increase of \$200,000 for library books bringing them to \$1 million.

Ms. Rhodes responded to the Council, stating that with regard to attrition, the City is budgeted at 100% of all positions being filled starting October 1, then percentages are taken off to address delays in hiring and that consideration is given that new hires will come in at lower salaries. She spoke to Community Investment Projects proposed to come on-line being absorbed within the existing tax rate, a total of 98 new full-time positions projected in 2007-08 with 52 related to Public Safety which are not included in the forecast. Ms. Rhodes stated that there are no program enhancements relating to increases for mandates, growth, increase in services, or information services requests for the three year period and that all discretionary items will be examined on their individual merit during the budget development process. She responded to the Council that the number of positions to be added represents a preliminary figure.

Ms. Rhodes spoke to the Water and Sewer Fund and information received from the North Texas Municipal Water District that both water and sewer will be increased by 5%. She spoke to the City operating under a Stage 3 Drought Contingency Plan and the 20% decline in water usage. Ms. Rhodes spoke to a major sewer main break and resultant \$8.5 million expenses with \$4.5 coming from a supplemental appropriation and other funding coming from water and sewer debt service and a reserve fund. She stated that the forecast includes a pass-through of the 5% increase for both water and sewer and an increase of \$1 on the base rate for meters effective May 1 to address a possible deficit position. She responded to the Council regarding upcoming capital expenditures.

Ms. Rhodes spoke to the Sustainability and Environmental Services Fund evening itself out and to notice of increases from the North Texas Municipal Water District. She responded to the Council that Plano is "middle of the road" for water/sewer rates when compared to other cities and stated she will bring back further information. Ms. Rhodes spoke to other cities subsidizing their water/sewer from the General Fund where Plano has a pay-as-you-go system. Ms. Rhodes spoke to shortages in the Municipal Golf Course Fund, the competitive nature of the market and to looking for ways to be more productive. She advised that further information will be brought to the Council. Ms. Rhodes stated that the Municipal Drainage, Convention & Tourism and Recreation Revolving Funds are doing fine with no deficits projected and reviewed upcoming dates on the budget calendar.

Mayor Evans stated concern regarding the situation with the North Texas Municipal Water District, the continuing rate increases and the take-or-pay contract being unworkable. She requested Council Members contact her to work with the City Manager and other cities with similar concerns toward finding a solution. Mayor Evans spoke to being penalized when the City is working to conserve and Mayor Pro Tem Johnson spoke to the requirement for a unanimous decision.

**Ordinance No. 2007-3-20:** To provide certain heritage resources located in the City of Plano, Texas, partial exemption from the current year ad valorem taxation in the amount of \$29,048; providing a severability clause and an effective date. [Regular Agenda Item (3)]

Long Range Planning Manager Zimmerman spoke to the Heritage Commission's decision-making process for annual tax exemptions and to receipt of an appeal. He advised that repair issues are ranked based on structural impact and timing of the repair and applicants are given at least one year to make repairs before they are removed from the program. Mr. Zimmerman spoke to the appellate having six items noted for repair, one noted for completion by February 1, 2007 or the exemption would be lost, the item being identified in 2005 and bricks not being replaced in an area where there would be concern about exposing interior walls to the elements. He stated that repairs were made after February 22, 2007 and spoke regarding the Commission meeting on February 27 at which time the property was not recommended for exemption. Mr. Zimmerman spoke to the Commission's consideration of the deadline and concern regarding granting a second extension.

Heritage Commission Chair Nichols spoke to the work of the Commission in reviewing the properties, providing adequate notice and clear communication of what is expected to ensure exemptions are being reinvested to keep the Downtown area and Heritage Districts special in Plano. He spoke to the appellate having three years to make repairs, a unanimous vote to deny the exemption and to not setting a precedent. Mr. Zimmerman advised Council Member Stahel that the exemption would be \$1,200 but could change based on a new appraisal. Mr. Nichols stated that the applicant would be welcome to reapply next year and any repairs made would be taken into consideration. Mayor Pro Tem Johnson requested information regarding land values be provided in future reports.

Juliette LaMarche requested consideration of a reversal of the Heritage Commission's decision, stating this is the first time she has been denied. She spoke to minor painting repairs and the need for a brick mason to replace six bricks, the many years she has been a property owner and to repairs now being complete. Ms. LaMarche responded to Council Member Stahel, stating that she has combined several plats into one and that the denial affects four buildings. Council Member Stahel spoke to there being deficiencies in three of four buildings and Ms. LaMarche spoke to prior approvals.

Council Member Stahel spoke to the level of detail in inspections and the three years provided to make repairs. He advised that Ms. LaMarche could reapply next year and to denying the exemption. Council Member Ellerbe spoke in agreement with Council Member Stahel. By a show of hands the Council denied the appeal.

Mayor Evans opened a Public Hearing. No one 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 Ellerbe, the Council voted 8-0 to provide certain heritage resources located in the City of Plano, Texas, partial exemption from the current year ad valorem taxation in the amount of \$29,048 as submitted; providing a severability clause and an effective date; and further to adopt Ordinance No. 2007-3-20.

There being no further discussion, Mayor Evans adjourned the meeting at 9:16 p.m.

---

**Pat Evans, MAYOR**

ATTEST:

---

**Diane Zucco, Assistant City Secretary**