

TEMPLE CITY COUNCIL

NOVEMBER 17, 2011

The City Council of the City of Temple, Texas conducted a Special Meeting on Thursday, November 17, 2011, at 2:00 P.M., at the Municipal Building, 2 North Main Street, in the 3rd Floor Conference Room.

Present:

Councilmember Perry Cloud
Councilmember Danny Dunn
Mayor Pro Tem Russell Schnieder
Councilmember Judy Morales
Mayor William A. Jones, III

1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, November 17, 2011.

Regular Agenda Item 4(H) - Street Use Licence allowing accessory building to be placed near drainage easement- Councilmember Schneider asked if this was a portable building?

Mr. Mabry replied yes.

Regular Agenda Item 6 - Donation Boxes - Ms. Speer noted that there have been several comments throughout the community.

Mayor Pro Tem Schneider asked if Ronald McDonald House had multiple boxes in various locations?

Ms. Speer replied yes.

Mayor Jones added that he has looked at several boxes as addressed in Mr. Wolfe's e-mail with concerns for wooden boxes. Is this allowed?

Ms. Speer as the ordinance is written now, wooded boxes are permitted.

Mayor Pro Tem Schneider stated this is being addressed to clean up the clutter around several of the donation boxes. He noted that metal boxes would be easier for up-keep and maintenance.

Councilmember Morales added that donation boxes for non-profit are extremely important.

Ms. Speer noted that anyone may host a collection of items.

Jonathan Graham, City Attorney noted there are issues with the First

Amendment when you are dealing with limiting solicitation.

Councilmember Dunn added that he wants to see the clutter cleaned up and in order to do so we need better regulations for donation boxes.

Councilmember Cloud didn't want to see the restriction on non-residential locations.

Mayor Pro Tem Schneider asked about the permit process and noted there would be permission by the property owner.

Councilmember Morales asked about benefiting the local communities.

Mayor Jones stated we aren't restricting others from placing a box due to City Attorney's comments on first amendment.

Ms. Foutz added that collection at any site is allowed.

Mayor Pro Tem Schneider added he believes that they should be allowed in all non-residential locations if permission is given by the property owner.

Councilmember Dunn agreed.

Regular Agenda Item #5 - rezoning Z-FY-11-50: Mayor Pro Tem Schneider advised he spoke with Mr. Scott and it didn't appear that he was willing to change is original request to O2.

Mr. Mabry stated that Mr. Scott wants to continue with the original request for O2.

Mayor Jones stated that Mr. Scott mentioned he was going to build upscale duplexes with garages; and doesn't want to change his request.

Regular Agenda Item R- Northwest Loop wet-lands and stream mitigation. Mr. Blackburn noted that this will be discussed in Nicole's upcoming presentation.

2. Receive update on NW Loop 363 project.

Nicole Torralva, Director of Public Works presented this presentation to the Council. Ms. Torralva reviewed the scope of the project and noted that we are approaching the design phase of this project. This will be a potential relief route for IH-35 construction. Financing for this project is \$46 million. Ms. Torralva added this project began in the Fall of 2010 with design; we anticipate the completion in Summer of 2014. Ms. Torralva stated there are few issues that are still being addressed such as ROW Acquisition, utility coordination and environmental permit and mitigation. All property owners have been contacted and appraisals are complete. The utility companies

have also been contacted; all private utilities will be relocated between December 2011 and May 2012.

Ms. Torralva discussed the impact of wetlands and streams mitigation which is the biggest issue. You can buy credits or mitigate on site. Ms. Torralva stated we have almost one acre of wetland and 4,100 linear feet of stream impact. A bank has been identified for both, but the stream impact bank is not open.

Mayor Pro Tem Schneider asked about creating a bank.

Bill Hicks, Lochner stated setting up a bank is a legal process and is project specific. This is not a recommended process.

Ms. Barnard asked what does the City get for the \$90,000?

Mr. Hicks replied there is nothing of tangible value, as it's an agreement. It is legally binding them to do what they have to do.

Ms. Torralva added for the stream impact we can either purchase credits or develop our option. We are then held responsible for the success of that option. Many options are being explored with the U.S. Corps of Engineers.

Mr. Blackburn noted we need to explore all options to keep this project moving forward and on schedule.

3. Discuss fourth quarter financial results for the fiscal year ended September 30, 2011.

Traci Barnard, Director of Finance presented fourth quarter financial results. She began with an overview of the General Fund revenues and expenditures, explaining those revenues that came in greater or less than budget. Ms. Barnard also provided sales tax revenues for the year of 2011, historical data and regional comparisons of sales tax. Also noted were the Wastewater Fund revenues and expenses as well as Drainage Fund. Ms. Barnard noted that \$959,064 will be added to the fund balance at year end. Ms. Barnard also provided an overview of the City's investments and Capital Improvement Programs.

4. Discuss Downtown Linear Park and redevelopment. Executive Session ? Pursuant to Chapter 551, Government Code, §551.072 ? Real Property ? The City Council may enter into executive session to discuss the purchase, exchange, lease or value of real property relating to City projects, the public discussion of which would have a detrimental effect on negotiations with a third party.

Ken Cicora, Director of Parks and Leisure Services presented this item to Council. He gave history on the downtown redevelopment which was to

design a linear park along the railroad tracks. This concept was presented in 2000 and for the city to begin acquiring land for the project. In October 2004 the Council received an updated design concept. Mr. Cicora presented some of those concepts to the Council again.

Mayor Jones stated the City Council would enter into executive session at this time approximately, 3:40 pm.

5. **Executive Session: Chapter 551, Government Code, §551.074 - Personnel Matter - The City Council will meet in executive session to discuss the employment, evaluation, duties and work plan of the City Manager. No final action will be taken.**

Mayor Jones reconvened the work session at approximately 5:00, with no action being taken by the City Council.

The City Council of the City of Temple, Texas conducted a Regular Meeting on Thursday, November 17, 2011 at 5:00 PM in the Council Chambers, Municipal Building, 2nd Floor, 2 North Main Street.

Present:

Councilmember Perry Cloud
Councilmember Danny Dunn
Mayor Pro Tem Russell Schneider
Councilmember Judy Morales
Mayor William A. Jones, III

I. CALL TO ORDER

1. Invocation

Chief of Police Gary Smith voiced the Invocation.

2. Pledge of Allegiance

Fire Chief, Lonzo Wallace led the Pledge of Allegiance.

II. PUBLIC COMMENTS

Public Comments: no comments

III. ELECTION ITEMS

3. **2011-6473-R: Consider adopting a resolution canvassing the returns of the November 8, 2011 Charter Amendment Election.**

Jonathan Graham, City Attorney reminded Council they are the official

canvassing body and presented the returns. There were 4,531 total votes received of which 655 were for and 3,876 were against the proposition.

Motion by Councilmember Judy Morales adopt resolution seconded by Councilmember Danny Dunn.

IV. CONSENT AGENDA

4. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:

(A) November 3, 2011 Special Called and Regular Meeting Contracts, Leases & Bid

(B) 2011-6474-R: Consider adopting a resolution amending a lease agreement with ES&S (Election Systems & Software) of Omaha, NE for election equipment.

(C) 2011-6475-R: Consider adopting a resolution authorizing the purchase of three marked police vehicles from Caldwell County of Caldwell, utilizing a BuyBoard contract in the amount of \$111,950.83.

(D) 2011-6476-R: Consider adopting a resolution authorizing the purchase of a 2012 Custom Crimson with a Spartan chassis fire engine from Metro Fire Apparatus Specialists, Inc. of Houston, utilizing the Houston-Galveston Area Council Interlocal Cooperative (HGAC) in the amount of \$580,546.

(E) 2011-6477-R: Consider adopting a resolution authorizing the purchase of 1,450 plastic 96-gallon refuse containers for the Solid Waste Division from Toter, Inc., Statesville, NC, through the State of Texas Contract (Bid# 450-A2) in the amount of \$67,773.

(F) 2011-6478-R: Consider adopting a resolution authorizing a contract with the Department of Veterans Affairs, Veterans Industries/Compensated Work Therapy for the provision of temporary workers for the Parks and Leisure Services Department in the amount of \$73,478.

(G) 2011-6479-R: Consider adopting a resolution ratifying an emergency contract with Bell Contractors of Belton, for the emergency replacement of a 6" and 10" sewer line using the pipe bursting method in the area of North 14th Street and Lamar Avenue in the amount of \$136,404.40

(H) 2011-6480-R: S-FY-12-01: Consider adopting a resolution authorizing a street use license to allow the encroachment of a 140 square-foot accessory building 12 feet within a public drainage easement at Lot 41, Block 1, The Creeks at Deerfield subdivision, commonly known as 6110 Shadow Creek Cove.

(I) 2011-6481-R: Consider adopting a resolution authorizing the following with respect to the procurement of electricity:

- 1. A memorandum of agreement with Texas Energy Aggregation, LLC of Waco, for consulting services related to the procurement of electricity and ongoing energy consulting services at a cost of \$.0005 per kWh; and**
- 2. The City Manager or the Director of Finance to act on behalf of the City to review pricing offers submitted for the supply of electricity, and if in the best interest of the City, enter into a contract with the lowest responsible bidder for a period of 12 to 59 months beginning for electrical meter reads after May 2012.**

(J) 2011-6482-R: Consider adopting a resolution authorizing a contract with Perry Office Plus, of Temple to move and reassemble furniture from the Police Headquarters building back to 209 E. Avenue A in the amount not to exceed \$48,000.

(K) Consider adopting a resolution authorizing the following contracts related to the demolition of seven (7) properties in the Avenue G area:

- 1. 2011-6483-R: Asbestos abatement contract to AAR, Inc. of Liberty Hill, in the amount of \$47,000;**
- 2. 2011-6484-R: Asbestos consulting contract to Austin Environmental, Inc. of Bryan, in the estimated amount of \$24,600;**
- 3. 2011-6485-R: Demolition contract for six (6) properties to Lloyd D. Nabors Demolitions, Inc. of Hutchins, in the amount of \$35,500; and**
- 4. 2011-6486-R: Demolition contract for one (1) property located at 601 South 7th Street to Precision Contractors of Troy, in the amount of \$75,000.**

(L) SECOND READING - Consider adopting ordinances

amending:

1. **2011-4484: Chapter 7, "Buildings," of the Code of Ordinances, by adopting the 2009 International Building Code, 2009 International Residential Code, 2009 International Plumbing Code, 2009 International Mechanical Code, 2009 International Fuel Gas Code, and the 2009 International Energy Conservation Code.**
2. **2011-4485: Chapter 12, "Fire Prevention and Protection," of the Code of Ordinances, by adopting the 2009 International Fire Code.**
3. **2011-4486: Chapter 21, "Minimum Housing Standards," of the Code of Ordinances, by adopting the 2009 International Property Maintenance Code and Amendments.**

(M) 2011-4487: SECOND READING - Consider adopting an ordinance authorizing an amendment to the Tax Increment Financing Reinvestment Zone No. 1 Financing and Project Plans to appropriate \$600,000 to the TMED-1st Street @ Loop 363 Project by reallocating funds from Avenue U from S&W Boulevard to 1st Street to the 13th to 17th connector from Avenue R to Loop 363.

(N) 2011-4489: SECOND READING - Consider adopting an ordinance amending the City's strategic investment zones incentive policies. Misc.

(O) 2011-6487-R: Consider adopting a resolution authorizing budget amendments for fiscal Year 2011-2012.

(P) 2011-6488-R: Consider adopting a resolution approving fourth quarter financial results for the fiscal year ended September 30, 2011.

(Q) 2011-6489-R: Consider adopting a resolution authorizing the carry forward of FY 2010- 2011 funds to the FY 2011-2012 budget.

(R) 1. 2011-6490-R: Consider adopting a resolution authorizing a credit sales agreement to purchase necessary credits for off-site wetland mitigation related to the Northwest Loop 363 Project.

2. **2011-6491-R: Consider adopting a resolution authorizing a credit sales agreement to purchase necessary credits for off-site stream mitigation related**

to the northwest Loop 363 Project.

Motion by Councilmember Perry Cloud adopt resolution approving Consent Agenda. seconded by Councilmember Danny Dunn.

V. REGULAR AGENDA

ORDINANCES

- 5. 2011-4488: SECOND READING - Z-FY-11-50 - Consider adopting an ordinance authorizing a rezoning from Agricultural (AG) to Office Two (O2) on 5.50 acres in the Nancy Chase survey, Abstract No. 5, Bell County, TX, being located at 510 Old Waco Road South of Conner Park and North of Brandon Drive.**

Brian Mabry, Director of Planning gave a brief update and presentation to the council. This case was heard by Council on November 3rd. Council expressed its concerns with the rezoning that would allow duplexes or triplexes. Mr. Mabry noted that he has had discussions with the applicant; and there is no desire by the applicant to change his request for Office-Two zoning. The applicant's representative was available for questions.

Mayor Pro Tem Schneider asked if the applicant was willing to consider changing his request and clarified this will allow for duplexes and triplexes.

Mr. Randy Harrell, 2106 Bird Creek Drive replied no, the applicant, Mr. Scott, did not want to change his request.

Mayor Pro Tem Schneider and Councilmember Morales voted nay; all other members voted for.

Motion by Councilmember Danny Dunn adopt ordinance on second and final reading. seconded by Councilmember Perry Cloud.

- 6. 2011-4490: FIRST READING - PUBLIC HEARING - Z-FY-11-30: Consider adopting an ordinance authorizing amendments to Section 7.6 General Development Standards to provide standards for the use of donation boxes.**

Autumn Speer, Director of Community Services presented this item to the Council. Ms. Speer noted that on October 6, 2011 this item was had a public hearing and was tabled. Ms. Speer

presented photos of various donation boxes and commented on the proposed guidelines for the donation boxes: they would be permitted at schools, or non-profit institutions, no time limits, 1 per 500 feet, deminisions for the box would be 4x6x6, they must be 50 feet from any right-of-way, in good repair and maintained as well as a required annual permit.

Mayor Pro Tem Schneider asked for clarification on placement requirements.

Mayor Jones commented that the dispursement rules are broader, but residential areas are prohibited from having a box.

Ms. Speer, replied yes.

Mayor Jones declared the public hearing open with regard to agenda item 6 and asked if anyone wished to address this item.

Steve Wolfe - 2810 Wickersham Dr.- representing HOT Goodwill, vice chair- revised the permit to only allow boxes on non profit organization location and remove 'institution', metal boxes only, adding a provision making the landloard/ property owner provide written authorization allowing the box to be placed on the property, making all parties liable. Mr. Wolfe, added he is in favor of donation boxes, but would like to have very specific guidelines. Mr. Wolfe also noted that he'd like to have a provision for an impound fee if boxes are found in violation. Goodwill is willing to pickup and store boxes for impound.

Mr. Dan Neisley - 4107 Green Point, Waco, TX - commented that most boxes are operated by non profit. He added that there have been many attempts to locate the responsible parties who gave permission to place the boxes on certain properties.

Susan Bolton - 2110 North Bell Street Belton - Executive Director of Ronald McDonald House, stated all of their boxes are metal. These donation boxes are picked up 3 times a week. Over the past seven years, The Rondald McDonald House has received over \$100,000 from these boxes; every bit helps.

Mayor Jones asked Ms. Bolton if permission is granted to place boxes on the property.

Ms. Bolton responded, yes permission is granted by the property owner.

Mayor Pro Tem Russell Schneider asked if any of the donation

boxes were located in public places?

Ms. Bolton advised yes. She gave address of a few - Fat Boys BBQ, Exxon, Conoco, LakeShore, Sears Building, and Skate Haven.

David Blackburn, City Manager commented the concern appears to be the location requirements.

Ms. Bolton stated yes, we have a facility; but not a safe location for placement of the donation box.

Mayor Pro Tem Schneider commented that this was a challenge for Staff. This was intended to help clean up the clutter around the existing boxes, and not about the money received.

Councilmember Morales noted that these boxes are important to all non-profit as it is utilized as income.

Mayor Jones asked Council if the terms for location needed to be expanded?

Mayor Pro Tem Schneider replied yes.

Mayor Jones added there is no time limit, but a permit has to be renewed annually by staff.

Ms. Speer added that violations will be treated as a Code Enforcement issue and follow the cycle that already exists.

Mayor Jones inquired on the time allowed to come into compliance.

Ms. Speer noted the ordinance reads effective immediately, but the City will allow adequate time.

Mayor Jones asked for clarification on metal or wood? Mayor Jones also noted that the time to comply will be January 1, 2012 or boxes will be removed.

Councilmember Dunn noted, he has no problem with wood donation boxes as long as they are in good repair and maintained.

Mr. Wolfe commented that he was opposed to wooden boxes and would like to see all metal boxes permitted.

Jonathan Graham, City Attorney noted there are first

amendment issues with limiting solicitation which make it difficult to place limitations.

Mayor Jones added it needs to be a Texas not for profit as a requirement for the permit.

Mr. Graham commented there are businesses that do this for profit to benefit non-profits.

There being no further comments, Mayor Jones declared the public hearing closed.

Mr. Graham, asked for clarification on the motion.

Ms. Speer commented the council has requested that they be allowed in all non-residential areas, 30 day provision to come into compliance, metal or wood so long as in good repair.

Motion by Councilmember Judy Morales adopt ordinance, with second and final reading set for December 1, 2011. seconded by Mayor Pro Tem Russell Schneider.

7. **2011-4491: FIRST READING - PUBLIC HEARING - Z-FY-11-48: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption on a portion of Lots 11, 12, and 13, Block 25, Roach Addition, commonly known as 313 East Central Avenue, zoned Central Area (CA) District.**

Brian Mabry, Director of Planning presented this item to Council. The applicant is Galaxy Retail Inc. and this property is zoned central area. It is currently stocked without proper approval. Mr. Mabry noted there is no off street parking required in Central District unless the property is a package store. A Conditional Use site plan has been submitted. Mr. Mabry noted the subject property has not done any work from the previously approved CUP in early 2011. The applicant proposes to remove seven existing on street parking spaces to allow four parallel parking spaces on Central; there are three existing parallel on street parking spaces on Martin Luther King; to the rear of the property is a vacant lot the applicant will convert into a true off street parking that is required for package stores. The applicant proposes nine spaces within the new parking lot. Mr. Mabry added the CUP site plan proposes to connect some areas with sidewalk connections.

Mayor Jones asked if the subject property entrance as well

as the new sidewalk would serve as both the entrance and delivery?

Mr. Mabry noted the rear is for delivery only per TABC rules and front is entry for customers. Lighting is also proposed as part of the plan with Acorn lights and poles and eight security lights around the building. Mr. Mabry added that landscaping is to be improved as well. The exterior of the building is in need of repairs on roof and paint of which the applicant agrees to do. There are three signs proposed for placement on the property. Mr. Mabry reminded Council of the general conditional use permit criteria. Mr. Mabry noted that this case was heard by the Planning and Zoning Commission on October 17th with a vote of 6/1 for approval; subject to the CUP site plan and the condition that any burglar bars be removed within one year of the opening of the store.

Mayor Jones declared the public hearing open with regard to agenda item 7 and asked if anyone wished to address this item.

Mr. Rija, 1113 Austin Texas owner of convenient store located on the corner and is favor of this package store.

Richard Lewis, 6819 Jupiter, Temple, TX (applicant), advised that all permits have been approved and this store will be open for business in six months.

There being no further comments, Mayor Jones declared the public hearing closed.

Councilmember Morales added that she and the applicant have spoken several times. Mr. Lewis has reassured her that this will be an improvement for the area. Councilmember Morales stated it is good to have development in this area.

Councilmember Dunn commented on his concerns for the proximity to another package store; believes this conveys the wrong message for those that might want to develop in the downtown area.

Mayor Jones added that we always have the opportunity to control what opens.

Councilmember Dunn voted nay, all other members voted in favor.

Motion by Councilmember Judy Morales adopt ordinance, with second and final reading set for December 1, 2011., be

approve, seconded by Councilmember Perry Cloud.

8. **2011-4492: FIRST READING - PUBLIC HEARING - Z-FY-11-51: Consider adopting an ordinance authorizing a rezoning from Multiple-Family One District (MF1) to General Retail District (GR) on ± 0.6 acres in Abstract 5, located on the north side of West Adams Avenue/FM 2305, ±185-feet west of the Holy Trinity Catholic High School driveway, generally known as 6758 West Adams Avenue.**

Brian Mabry, Director of Planning presented this item to the Council. The applicant is Lisa Joshlin; this property is undeveloped and is located west of Holy Trinity High School driveway. The future land use designation is for suburban commercial and the requested zoning complies with recommendation. Mr. Mabry noted a few permitted uses and added that the existing zoning currently allows for duplex and triplex. The Planning and Zoning Commission heard this case on October 17th and voted 7/0 to recommend approval.

Mayor Jones declared the public hearing open with regards to agenda item 8 and asked if anyone wished to address this item. There being no comments, Mayor Jones declared the public hearing closed.

Motion by Councilmember Danny Dunn adopt ordinance, with second and final reading set for December 1, 2011., be approve, seconded by Councilmember Perry Cloud.

William A. Jones, III, Mayor

ATTEST:

Lacy Borgeson
City Secretary