

**NOTICE OF A REGULAR MEETING
OF THE GOVERNING BODY
OF THE CITY OF MIDLOTHIAN, TEXAS**

Tuesday, June 22, 2010

Pursuant to the provisions of Chapter 551 VTCA Government Code, notice is hereby given of a Regular Meeting of the Midlothian City Council, to be held in the Council Chambers of City Hall, 104 West Avenue E, Midlothian, Texas

REGULAR AGENDA – 6:00 P.M.

Call to Order, Invocation and Pledge of Allegiance

- 2010-203 Announcements/Presentations
- a. Community Affairs calendar
 - b. Utility Advisory Board report
 - c. Administrative Announcements related to personnel

CONSENT AGENDA

All matters listed under Consent Agenda are considered to be routine by the City Council and will be enacted by one motion without separate discussion. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- 2010-204 Consider and act upon minutes from City Council meeting of June 8, 2010.
- 2010-205 Consider and act upon an Ordinance establishing Commercial Filming Guidelines for the City of Midlothian, Texas
- 2010-206 Consider and act upon a contract with Reynolds Asphalt and Construction Company for Asphalt/Pavement Scarifying and Rehabilitation Services throughout the City of Midlothian

PUBLIC HEARINGS

- 2010-207 Consider and act upon an ordinance providing for a curfew for minors under 17 years of age. The ordinance is designed to prohibit the unsupervised and random movement of juveniles in the night time to prevent harm to the juvenile as well as deter crimes otherwise committed by juveniles
- 2010-208 Conduct a public hearing to consider and act upon an Ordinance amending Ordinance No. 2006-44, the original Planned Development Ordinance of MidTowne (PD-41), by amending Section 2, the Planned Development Conditions of Use, revising the Design Booklet to better clarify its intent regarding the development of MidTowne, and any other corresponding deletions or changes to various sections and subsections. Property contains ± 131.42 acres, in the W. Hawkins Survey, Abstract No. 465 and the B.F. Hawkins Survey, Abstract No. 464, and is generally located east of FM 663 and west of South 14th Street, in the city of Midlothian, Texas. Preserving all other portions of Ordinance 2006-44; providing a conflicts clause; providing a severability clause; and providing an effective date. (Case No. Z02-2009-31)

REGULAR AGENDA

- 2010-209 Citizens to be Heard
- 2010-210 Consider and act upon updates to the City of Midlothian Human Resources Policy Manual related to Chapter 14 Computer and Cell Phone Usage Policy

- 2010-211 Consider and act upon a Resolution in support of North Texas 2050, a vision document created through collaboration with residents, experts and regional leaders that describes the preferred future for the Dallas-Ft. Worth region. (Case No. Res14-2009-43)
- 2010-212 Consider and act upon a contract with Circle H Contractors, L.P. of Midlothian, Texas, for the 9th Street Water Line and Bowie-Crockett Sanitary Sewer project in an amount not to exceed \$388,565

EXECUTIVE SESSION

Executive Session items are discussed in closed session but any and all action is taken in regular open session. Executive Session is not open to the public because there is a compelling need of confidentiality (e.g., certain real estate, litigation, or personnel matters).

1. Section 551.071 Legal: Consultation with attorney regarding Cause No. 67202, Midlothian v. Texas Central Business Lines Corporation, et al, pursuant to attorney's ethical duty to advise City regarding such matters
2. Section 551.071 Legal: Consultation with attorney regarding Cause No. 75885, City of Midlothian v. Randall Denton and Musket Corporation, pursuant to attorney's ethical duty to advise City regarding such matters
3. Section 551.071 Legal: Consultation with attorney regarding Cause No. 3-07-CV-1351-N, Texas Central Business Lines Corporation v. City of Midlothian
4. Section 551.072 Real Estate: Deliberate and consider the acquisition of real property necessary for roadway and parks improvement projects
5. Section 551.074(a)1 Personnel Matters: to deliberate the Municipal Court Judge position
6. Section 551.087 Deliberation regarding economic development negotiations

REGULAR AGENDA

- 2010-213 Action resulting from Executive Session, Item #1: Cause No. 67202, TCBL
- 2010-214 Action resulting from Executive Session, Item #2: Cause No. 75885, Randall Denton
- 2010-215 Action resulting from Executive Session, Item #3: Cause No. 3-07-CV-1351-N, TCBL
- 2010-216 Action resulting from Executive Session, Item #4: Real Estate/Roadway and Parks
- 2010-217 Action resulting from Executive Session, Item #5: Personnel
- 2010-218 Action resulting from Executive Session, Item #6: Economic development negotiations
- 2010-219 Adjourn

I, Lou Jameson, City Secretary of the City of Midlothian, Texas, do hereby certify that this Notice of Meeting was posted on the front window of City Hall, 104 West Avenue E, Midlothian, Texas, at a place readily accessible to the general public at all times, no later than the 18th day of June, 2010 at or before 5:00 p.m.

Lou Jameson, City Secretary

**This facility is wheelchair accessible and accessible parking spaces are available.
Requests for reasonable accommodations must be made 48 hours prior to this meeting.
Please contact the City Secretary at 775-3481 for further information.**



AGENDA ITEM 2010-204

AGENDA CAPTION:

Consider and act upon minutes from City Council meeting of June 8, 2010

ITEM SUMMARY/BACKGROUND:

Minutes from the June 8 Council meeting are submitted for approval or correction

SPECIAL CONSIDERATION:

N/A

FINANCIAL IMPACT/FUNDING SOURCE:

N/A

ATTACHMENTS:

1. Minutes from Regular Meeting of June 8, 2010

ALTERNATIVES:

Approve or correct

RECOMMENDATION:

Approve as submitted

SUBMITTED, REVIEWED BY AND TO BE PRESENTED BY:

Lou Jameson, City Secretary, for the June 22, 2010 City Council Meeting



City Secretary

REVIEWED BY:



Tammy Varner, Deputy City Secretary

APPROVED BY:



Don Hastings, City Manager



AGENDA ITEM 2010-204

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ATTACHMENTS:

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RECOMMENDATION:

Approve as submitted

SUBMITTED, REVIEWED BY AND TO BE PRESENTED BY:

Lou Jameson, City Secretary, for the June 22, 2010 City Council Meeting



City Secretary

REVIEWED BY:



Tammy Varner, Deputy City Secretary

APPROVED BY:



Don Hastings, City Manager



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ATTACHMENTS:

1. Minutes from Regular Meeting of June 8, 2010

ALTERNATIVES:

Approve or correct

RECOMMENDATION:

Approve as submitted

SUBMITTED, REVIEWED BY AND TO BE PRESENTED BY:

Lou Jameson, City Secretary, for the June 22, 2010 City Council Meeting



City Secretary

REVIEWED BY:



Tammy Varner, Deputy City Secretary

APPROVED BY:



Don Hastings, City Manager

**MINUTES
REGULAR COUNCIL MEETING
JUNE 8, 2010**

The City Council of the City of Midlothian convened in a Regular Meeting in the Council Chambers of City Hall, 104 West Avenue E, with the meeting having been open to the public and notice of said meeting having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present to-wit:

Boyce L. Whatley	§	Mayor
Jamie Wickliffe	§	Councilmember Place 1
Bill Houston	§	Councilmember Place 2
Jason Kyle	§	Councilmember Place 3
Joe Frizzell	§	Mayor Pro Tem Place 4
Hank Miller	§	Councilmember Place 5
Steve Massey	§	Councilmember Place 6

REGULAR AGENDA – 6:00 P.M.

Mayor Whatley called the meeting to order at 6:00 p.m. with notice of the meeting duly posted and a quorum present. Mayor pro tem Frizzell gave the invocation and led in the pledges.

2010-184 ANNOUNCEMENTS/PRESENTATIONS

a. Community Affairs calendar

June 12 – Downtown Farmers Market; June 11-13 – DFW Summer Balloon Classic and Airfest; June 12 – Movies in the Park featuring Planet 51; June 14 – 18 Senator District 22 Election Run-Off; June 22 – Election Day; engraved brick pavers being sold as fund-raiser for Larkin-Newton cabin restoration project

b. Historical Society presentation related to J.R. Irvin Gymnasium

Representatives Ted Howard and Ray Barksdale provided a report concerning efforts to preserve and adapt the WWII-era Gymnasium for community use.

c. Administrative Announcements related to personnel

Fire and Police personnel were commended for their professionalism and skill in emergency response to a Care Flight helicopter crash that killed both the pilot and mechanic aboard.

CONSENT AGENDA

2010-185 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETING OF MAY 25, 2010.

2010-186 CONSIDER AND ACT UPON AWARDED A ONE-YEAR CONTRACT TO MIDTECH POWER AND CONTROL, LLC, FOR CITY-WIDE ELECTRICAL SERVICES

2010-187 CONSIDER AND ACT UPON AWARDED A CONTRACT TO LEGACY CONTRACTING, LP, DBA CONTROL SPECIALIST SERVICES, LP, TO PROVIDE PUMPING FACILITY MAINTENANCE SERVICES FOR THE WATER TREATMENT PLANT ON AN AS NEEDED BASIS.

Item 2010-186 was moved to the Regular Agenda at the request of Councilmember Miller. Mayor pro tem Frizzell moved to approve the amended Consent Agenda. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

REGULAR AGENDA

2010-186 CONSIDER AND ACT UPON AWARDING A ONE-YEAR CONTRACT TO MIDTECH POWER AND CONTROL, LLC, FOR CITY-WIDE ELECTRICAL SERVICES

Mike Adams stated that the purpose of the contract was to consolidate electrical work for all public facilities with one contractor and to lock in labor rates as well as material and tool rental costs. Staff recommended Midtech based on first-hand experience with equipment and facilities and documented positive experience with numerous municipalities throughout the area.

Councilmember Miller moved to award the bid to DG&G. Motion died for lack of a second. Mayor pro tem Frizzell moved to award the bid to Midtech with the requirement that detail be added to invoicing that would identify whether work was performed by a master or journeyman electrician. Motion was seconded by Councilmember Kyle and carried by a vote of 6-1 with Councilmember Miller voting in opposition.

PUBLIC HEARINGS

2010-188 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE FOR A SPECIFIC USE PERMIT (SUP) REQUEST TO ALLOW A 1,000,000-GALLON ELEVATED WATER TOWER AT 1521 TOWER ROAD. PROPERTY IS ZONED AGRICULTURAL (A) DISTRICT, CONSISTING OF 4.9562 ACRES OUT OF THE ALEXANDER JAMES SURVEY, ABSTRACT 589 AND GENERALLY LOCATED WEST OF FM 663 AND APPROXIMATELY 1,192 FEET NORTH OF TOWER ROAD, IN THE CITY OF MIDLOTHIAN (CASE NO. SUP03-2009-37)

Mayor Whatley opened the Public Hearing and Mr. Garfield presented the request. Of the notices mailed to four adjacent property owners, three were returned in approval and one in opposition.

Applicant and adjacent property owner Randel Kirk, 1525 Tower Road, spoke in support of the request and asked that it be approved without caveats. Approval had been received from the Texas Water Development Board, TCEQ and the U.S. Department of Agriculture.

Councilman Wickliffe moved to close the Public Hearing. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (7-0). Councilmember Houston moved to approve Item 2010-188 with the four recommendations from P&Z. Motion was seconded by Councilmember Massey and carried unanimously (7-0).

2010-189 CONSIDER AND ACT UPON AN ORDINANCE TO VACATE AND ABANDON THE LAST PORTION OF OLD WEST AVENUE F SAID RIGHT-OF-WAY CONTAINS ±0.126 ACRES AND IS GENERALLY LOCATED EAST OF ERIC STREET AND ± 175 FEET SOUTH OF THE CURRENT AVENUE F, AND MORE FULLY DESCRIBED HEREINAFTER ON THE ATTACHED EXHIBIT "A"; DECLARING THAT SUCH RIGHT-OF-WAY IS UNNECESSARY FOR USE BY THE PUBLIC; AUTHORIZING THE MAYOR OF THE CITY OF MIDLOTHIAN, TEXAS TO EXECUTE A QUITCLAIM DEED RELEASING PUBLIC OWNERSHIP, INTEREST OR CONTROL OF SAID RIGHT-OF-WAY TO THE ABUTTING FEE SIMPLE PROPERTY OWNER; PROVIDING FOR ENGROSSMENT AND ENROLLMENT AND PROVIDING FOR AN EFFECTIVE DATE (CASE NO. ROW02-2009-45)

Councilmember Wickliffe moved to approve Item 2010-189 with an additional requirement to reserve the abandoned right-of-way as an easement until use of the property is determined, at such time, existing utilities would be relocated. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

REGULAR AGENDA

2010-190 CITIZENS TO BE HEARD

Chelsea Womack, My Green Business, introduced her company and the potential for savings by retrofitting the City's electricity program. Ms. Womack was directed to contact the Purchasing Agent to be considered for a future agenda if appropriate.

Items 2010-191 and 2010-192 were opened together for discussion but votes were taken separately.

2010-191 CONSIDER AND ACT UPON AN ORDINANCE AMENDING ORDINANCE 2007-25, THE CITY'S DRILLING ORDINANCE, TO AMEND ARTICLE VI INCREASING THE DRILLING PERMIT FEE AND ESTABLISHING AN ANNUAL REGISTRATION FEE FOR EACH OPERATING WELL; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; ESTABLISHING AND PRESCRIBING PENALTIES FOR VIOLATION OF ITS PROVISION; REPEALING ALL CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY AND A SAVING CLAUSE; AND PROVIDING FOR IMMEDIATE EFFECT (CASE NO. M11-2009-49)

Mr. Garfield presented amendments to: require an annual registration fee for each operating gas well, an abandonment fee for wells that cease production and are capped, increase drilling permit fees from the current \$5,000 to a proposed \$7,500 to cover the cost of 3rd party gas well inspections by a qualified and reputable company.

Mayor pro tem Frizzell moved to approve Item 2010-191 as presented. Motion was seconded by Councilmember Houston and carried unanimously (7-0).

2010-192 CONSIDER AND ACT UPON A MASTER SERVICES AGREEMENT BETWEEN THE CITY OF MIDLOTHIAN AND UNIVERSAL ENSCO, INC. FOR GAS WELL INSPECTION SERVICES (CASE NO. M12-2009-50)

Based on the recommendation of staff and legal counsel, Mayor Whatley moved to table Item 2010-192. Motion was seconded by Councilmember Wickliffe and carried unanimously (7-0).

2010-193 CONSIDER AND TAKE ACTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A FIVE YEAR CONTRACT WITH WEAVER, LLP, FOR PROFESSIONAL FINANCIAL AUDITING SERVICES.

Mr. Dick stated that the committee appointed to score and rank bids had unanimously recommended Weaver, LLP as the best value based on their national ranking, resources available to them, ability to stay current with constant legislative changes and make recommendations throughout the year.

Councilmember Houston move to approve Item 2010-193 as presented. Motion was seconded by Councilmember Massey and carried unanimously (7-0).

2010-194 ANNUAL REVIEW OF THE POLICY ON GOVERNANCE PROCESS AND CODE OF ETHICS

No formal amendments to the Policy were made. It was clarified that, in the event one of the Governance Subcommittee members was the subject of a complaint, the matter would be taken up by the full Council. Additionally, it was reiterated that all legal matters to be addressed by the City Attorney would be funneled through the City Manager, and, if the legal matter involved the City Manager, the issue would be directed to the Mayor.

With no updates to receive, Executive Session was cancelled.

EXECUTIVE SESSION

- 1. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 71-181-00458-08, CITY OF MIDLOTHIAN AND COUNTY OF ELLIS V. KEHE FOODS**
- 2. SECTION 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS**

3. **SECTION 551.071** **LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 67202, MIDLOTHIAN V. TEXAS CENTRAL BUSINESS LINES CORPORATION, ET AL, PURSUANT TO ATTORNEY'S ETHICAL DUTY TO ADVISE CITY REGARDING SUCH MATTERS**
4. **SECTION 551.071** **LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 75885, CITY OF MIDLOTHIAN V. RANDALL DENTON AND MUSKET CORPORATION, PURSUANT TO ATTORNEY'S ETHICAL DUTY TO ADVISE CITY REGARDING SUCH MATTERS**
5. **SECTION 551.071** **LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 3-07-CV-1351-N, TEXAS CENTRAL BUSINESS LINES CORPORATION V. CITY OF MIDLOTHIAN**
6. **SECTION 551.072** **REAL ESTATE: DELIBERATE AND CONSIDER THE ACQUISITION OF REAL PROPERTY NECESSARY FOR ROADWAY AND PARKS IMPROVEMENT PROJECTS**
7. **SECTION 551.074(A)1** **PERSONNEL MATTERS: TO DELIBERATE THE MUNICIPAL COURT JUDGE POSITION**

REGULAR AGENDA

2010-195 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: KEHE FOODS
Executive Session was not conducted.

2010-196 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: ECONOMIC DEVELOPMENT NEGOTIATIONS
Executive Session was not conducted.

2010-197 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: CAUSE NO. 67202, TCBL
Executive Session was not conducted.

2010-198 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: CAUSE NO. 75885, RANDALL DENTON
Executive Session was not conducted.

2010-199 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: CAUSE NO. 3-07-CV-1351-N, TCBL
Executive Session was not conducted.

2010-200 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #6: REAL ESTATE/ROADWAY AND PARKS
Executive Session was not conducted.

2010-201 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #7: PERSONNEL
Executive Session was not conducted.

2010-202 ADJOURN

With there being no further business to discuss, Mayor Whatley adjourned the meeting at 7:40 p.m.

ATTEST:

Boyce L. Whatley, Mayor

Lou Jameson, City Secretary

AGENDA CAPTION:

Consider and act upon an Ordinance establishing Commercial Filming Guidelines for the City of Midlothian, Texas

ITEM SUMMARY/BACKGROUND:

The Texas Film Commission has established the Film Friendly Texas program to help cities effectively handle on-location commercial filming. A city must adopt commercial filming guidelines and an associated application as part of the process to be certified as a Film Friendly Texas community.

The proposed commercial filming guidelines will cover important topics such as:

- 1: Permit Requirements & Fees
- 2: Use of City Equipment and Personnel
- 3: Use of City Property
- 4: Use of Special Equipment & Vehicles
- 5: Hours of Filming
- 6: Notification of Neighbors
- 7: Certificate of Insurance and Liability

These guidelines will provide valuable information to film production companies to help them understand what to expect if they choose to film within the City of Midlothian. These guidelines will empower city staff to move quickly if and when a film production company shows interest in filming within Midlothian. Ultimately, the guidelines will give Midlothian a better opportunity to attract a commercial filming project, capture sales tax revenue and jobs generated by such a project and protect city residents from potential inconveniences. The attached Ordinance was reviewed and approved by the City Attorney.

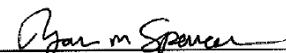
ATTACHMENTS:

1. Proposed Ordinance

RECOMMENDATION:

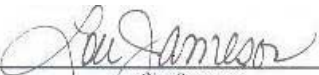
Staff recommends **approval** of the attached Ordinance as presented.

PRESENTED BY: Ryan Spencer, AICP, Comprehensive Planning Manager
For the Tuesday, June 22, 2010, City Council Meeting



Ryan Spencer, Comprehensive Planning Manager

REVIEWED BY:



City Secretary

APPROVED BY:



Don Hastings, City Manager

ORDINANCE 2010-

AN ORDINANCE ESTABLISHING GUIDELINES FOR COMMERCIAL FILMING IN THE CITY OF MIDLOTHIAN, TEXAS; ESTABLISHMENT OF A COMMERCIAL FILMING APPLICATION AND PERMIT; AND, PROVIDING A PENALTY FOR THE VIOLATION THEREOF; AND, PROVIDING A CONFLICTS CLAUSE; AND, PROVIDING A SEVERABILITY CLAUSE; AND, PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Midlothian (“City”) is a home rule City with a Charter approved by the Voters of the City pursuant to Article II, Section 5 of the Texas Constitution, and,

WHEREAS, the City of Midlothian recognizes that on-location commercial filming is good business for the community and can have a positive impact on the local economy; and,

WHEREAS, the Texas Film Commission has established the Film Friendly Texas program in an effort to help communities effectively handle on-location filming; and,

WHEREAS, the adoption of filming guidelines and permit regulations are a requirement in order for a city to be branded as Film Friendly Texas Community; and,

WHEREAS, the City Council finds and concludes that amending the Midlothian Code of Ordinances relating to commercial on-location filming is in the best interest of the public and in support of the health, safety, morals and general welfare of the City,

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MIDLOTHIAN, TEXAS:

SECTION 1. Guidelines for Filming Permit Regulations Ordinance are hereby to read as follows:

GUIDELINES FOR COMMERCIAL FILMING IN THE CITY OF MIDLOTHIAN

I. PURPOSE

The following guidelines are intended to protect the personal and property rights of our Midlothian, TX residents and businesses. The City Manager reserves the right to impose additional regulations in the interest of public safety if deemed necessary.

These guidelines cover requests for commercial use of City-owned property (streets, right-of-ways, parks, public buildings), commercial use of private property which may affect adjacent public or private property, and the use of City equipment and personnel in the filming of movies, TV shows, commercials, and related activities.

II. CITY CONTROL/CITY MANAGER AUTHORITY

The City Manager may authorize the use of any street, right-of-way, or public building, equipment or personnel for commercial uses in the filming or taping of movies, television programs, commercials, or training films and related activities. In conjunction with these uses, the City Manager may require that any or all of the conditions and/or remuneration as specified on the application as shown in EXHIBIT A be met as a prerequisite to that use.

The applicant agrees that The City of Midlothian, TX shall have full control over the use of public streets and buildings of the City while being used, as well as control over the hours of production and the general location of the production. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming if determined to be detrimental to the public health, safety and welfare.

The applicant shall agree to allow the respective City departments (i.e., Police, Fire, Building) to inspect all structures and/or devices and equipment to be used in connection with the filming and taping if required by the City Manager.

III. PERMIT REQUIREMENTS

Before filing an application for filming in Midlothian, TX, the Office of the City Manager must be contacted to discuss the production's specific filming requirements and the feasibility of filming in Midlothian, TX.

Any commercial producer who desires to undertake a commercial production in Midlothian, TX is required to complete and return the application for filming to the Office of the City Manager, within the time frames below:

- **Commercials or episodic television:** a minimum of two (2) business days prior to the commencement of filming or any substantial activity related to the project.
- **Feature films:** a minimum of five (5) business days prior to the commencement of filming or any substantial activity related to the project.

IV. FEES

An application processing fee of \$25.00 should accompany each application for filming in Midlothian, TX.

The City Manager may waive this fee upon proof of an organization's non-profit status, or for any other reason deemed necessary.

V. USE OF CITY EQUIPMENT AND PERSONNEL

The applicant will agree to pay for the costs of any Police, Fire, Public Works, or other City personnel assigned to the project (whether specifically requested by the production or not). Remuneration rates for the use of any City equipment, including police cars and fire equipment, will be established on a case-by-case basis as determined by the City Manager. The applicant will agree to pay in full, promptly upon receipt of an invoice, the charges incurred. The City Manager may, at his/her discretion, require an advance deposit for the use of the equipment.

The City Manager in consultation with the Chief of Police and/or Fire Chief shall have the authority to stipulate additional fire or police requirements and level of staffing for same, at any time during a film project if it is determined to be in the best interest of public safety, health and welfare, which cost shall be borne by the Applicant. Off-duty police officers and firefighters shall be paid by the production company at a rate no less than one and one-half their hourly rate based on their rank.

VI. USE OF CITY PROPERTY

The City Manager may authorize the use of any street, right-of-way, or public building, use of Midlothian, Texas name, trademark or logo and/or use of City equipment and/or personnel for commercial uses in the production of movies, television programs, commercials, or training films and related activities. In conjunction with these uses, the City Manager may require that any or all of the conditions and/or remuneration as specified on the application be met as a prerequisite to that use. A security or damage deposit may be required based on production activity.

Depending upon the extent of the use of City property, the Applicant agrees to reimburse the City for inconveniences when using public property. Following is the rate schedule:

Activity	Cost (per Calendar Day)
Total or disruptive use (regular operating hours) of a public building, park, right-of-way, or public area	\$500
Partial non-disruptive use of a public building, park, right-of-way, or public area	\$250
Total closure or obstruction of public street or right-of-way, including parking lots and on-street parking (for filming purposes)	\$50 per block
Partial closure or obstruction of public street or right-of-way, including parking lots and on-street parking (for filming purposes)	\$25 per block
Use of City parking lots, parking areas, and City streets (for the purpose of parking film trailers, buses, catering trucks, and other large vehicles)	\$50 per block or lot

The applicant agrees that The City of Midlothian, Texas, shall have full control over the use of its name, trademark, logo, public streets and buildings of the City while any are being used, as well as control over the hours of production and the general location of the production. The City reserves the full and absolute right to prohibit all filming or to order cessation of filming activity if it is determined to be hazardous to the public health, safety and welfare.

VII. SPECIAL EQUIPMENT, VEHICLES AND FOOD SERVICE

The applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming, including proposed hours of use and proposed parking locations. Such locations will need to be specifically approved by the City so as to maintain traffic safety. On-street parking or use of public parking lots is subject to City approval. The use of exterior lighting, power generators, or any other noise- or light-producing equipment requires on-site approval of the City Manager. Any catering service or food preparation is subject to City inspection and approval.

VIII. HOURS OF FILMING

Unless permission has been obtained from the City Manager in advance and affected property owners, tenants and residents have been notified, filming will be limited to the following hours: Monday through Friday, 7:00 a.m. to 9:00 p.m., and Saturday, Sunday and holidays, 8:00 a.m. to 8:00 p.m.

IX. NOTIFICATION OF NEIGHBORS

The applicant shall provide a short written description, approved by the City Manager, of the schedule for the proposed production to the owners, tenants and residents of each property in the affected neighborhood (as defined by boundaries set by the City Manager). The applicant, or his or her designee, shall make a good faith effort to notify each owner, tenant and resident of all such

property, and shall submit, as part of this application, a report noting each owner, tenant or resident's comments, along with their signatures, addresses and phone numbers. Based upon this community feedback, the City Manager may grant or deny the filming application.

X. CERTIFICATE OF INSURANCE

The producer shall attach a certificate of insurance, naming The City of Midlothian, TX as an additional insured, in an amount not less than \$1,000,000 general liability, including bodily injury and property damage with a \$5,000,000 umbrella; and automobile liability (if applicable) in an amount not less than \$1,000,000 including bodily injury and property damage.

XI. LIABILITY

The applicant agrees to pay in full, promptly upon receipt of an invoice, the costs of repair for any and all damage to public or private property, resulting from or in connection with, the production, and restore the property to its original condition prior to the production, or to better than original condition.

XII. HOLD HARMLESS AGREEMENT

The producer shall sign the following Hold Harmless Agreement holding the City harmless from any claim that may arise from their use of designated public property, right-of-way, or equipment in conjunction with the permitted use:

I certify that I represent the firm which will be performing the filming/taping at the locations specified on the attached permit application. I further certify that I and my firm will perform in accordance with the directions and specifications of The City of Midlothian, TX, and that I and my firm will indemnify and hold harmless The City of Midlothian, TX for and from any loss, damage, expense, claims and costs of every nature and kind arising out of or in connection with the filming/taping pursuant to this permit.

I further certify that the information provided on this Application is true and correct to the best of my knowledge, and that I hold the authority to sign this and other contracts and agreements with the City of Midlothian on behalf of the firm.

Signed: _____

Title: _____

Date: _____

SECTION 2. CONFLICTS This ordinance shall be cumulative of all provisions of ordinances and the Code of the City of Midlothian, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances or Code provisions, in which event the conflicting provisions of such ordinances are hereby superseded.

SECTION 3. SEVERABILITY CLAUSE If any section, article, paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. PENALTY Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed

Two Thousand Dollars (\$2,000.00) and a separate offense shall be deemed committed upon each day during or on which a violations occurs or continues.

SECTION 5. EFFECTIVE DATE This ordinance shall become effective from and after the date of its passage, and it is accordingly so ordained.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS ON THIS THE 22 DAY OF JUNE 2010.

APPROVED:

Boyce L. Whatley, Mayor

ATTEST:

Lou Jameson, City Secretary

APPROVED AS TO FORM:

Don Stout, City Attorney



EXHIBIT A
APPLICATION FOR COMMERCIAL FILMING IN
THE CITY OF MIDLOTHIAN

Title of Project:

Type of Production:

Commercial _____

Feature Film _____

Television _____

Training Film _____

Public Service Announcement _____

Other _____

Location of filming:

Date(s) and Time(s) of filming:

Contacts:

Production Office: _____ **Name:** _____

Address: _____ **Phone:** _____ **Fax:** _____

Producer: _____ **Name:** _____

Address: _____ **Phone:** _____ **Fax:** _____

Location Manager: _____ **Name:** _____

Address: _____ **Phone:** _____ **Fax:** _____

Texas Film Commission Representative: _____

PRODUCTION (Attach additional sheets if necessary.)

1. Production schedule and activities, including stunts, pyrotechnics, special effects, aerial photography, amplified sound or use of animals: (Give dates and times and rain dates. Hours should include set-up, holding of sets and restoration.):

2. Number of persons involved with the production, including cast and crew:

3. Anticipated need of City personnel, equipment or property:

4. Describe any areas in which public access will be restricted during production:

5. Describe alterations to property:

6. Number and type of production vehicles to be used and location(s) where vehicles will be parked:

7. Location where crew will be fed, if not at production location:

8. Location where extras will be held, if not at production location:

9. Map of anticipated street closure(s) or other public area use.

Application completed by:

Name/Title: _____ Date: _____

Approved by: _____ Date: _____

The "Rules for Filming in Midlothian, Texas apply to all filming activities, and the Office of the City Manager may require the applicant to acknowledge receipt of the Rules prior to approving this application.



AGENDA ITEM 2010-207

AGENDA CAPTION: Consider and act upon a contract to Reynolds Asphalt and Construction Company for Asphalt/Pavement Scarifying and Rehabilitation Services throughout the City of Midlothian.

ITEM SUMMARY/BACKGROUND:

An Invitation to Bid was released for Asphalt Scarifying/Rehabilitation Services on May 12, 2010. This bid was advertised in the Waxahachie Daily Light and the Midlothian Mirror on May 12th and May 19th, 2010. The bid was also posted on the Demand Star website with 46 suppliers being notified of the bid opportunity. Two vendors downloaded bid specifications from Demand Star and three bids were received by the bid closing time on May 28, 2010, at 2:00 p.m., C.S.T., with Reynolds Asphalt and Construction Company being the most advantageous of the three bids received.

SPECIAL CONSIDERATION:

This is a multi-year, unit price contract for Asphalt/Pavement Scarifying and Rehabilitation Services work that will be utilized on an as-needed basis. The unit price bid covers the labor, equipment and material costs necessary for a complete job.

FINANCIAL IMPACT/FUNDING SOURCE:

Funding is available in accounts 105-617-644 (Street-Drainage Rehab) and 105-620-746 (Street Maintenance).

ATTACHMENTS:

1. Bid Tabulation
2. Contract

ALTERNATIVES:

Approve or Deny.

RECOMMENDATION:

Staff recommends approval as presented.

SUBMITTED BY and TO BE PRESENTED BY:

Adam Mergener, Director of Public Works for the June 22, 2010 Council meeting



Director of Public Works

REVIEWED BY:



Chris Dick, Finance Director



AGENDA ITEM 2010-206

AGENDA CAPTION: Consider and act upon a contract to Reynolds Asphalt and Construction Company for Asphalt/Pavement Scarifying and Rehabilitation Services throughout the City of Midlothian.

ITEM SUMMARY/BACKGROUND:

An Invitation to Bid was released for Asphalt Scarifying/Rehabilitation Services on May 12, 2010. This bid was advertised in the Waxahachie Daily Light and the Midlothian Mirror on May 12th and May 19th, 2010. The bid was also posted on the Demand Star website with 46 suppliers being notified of the bid opportunity. Two vendors downloaded bid specifications from Demand Star and three bids were received by the bid closing time on May 28, 2010, at 2:00 p.m., C.S.T., with Reynolds Asphalt and Construction Company being the most advantageous of the three bids received.

SPECIAL CONSIDERATION:

This is a multi-year, unit price contract for Asphalt/Pavement Scarifying and Rehabilitation Services work that will be utilized on an as-needed basis. The unit price bid covers the labor, equipment and material costs necessary for a complete job.

FINANCIAL IMPACT/FUNDING SOURCE:

Funding is available in accounts 105-617-644 (Street-Drainage Rehab) and 105-620-746 (Street Maintenance).

ATTACHMENTS:

1. Bid Tabulation
2. Contract

ALTERNATIVES:

Approve or Deny.

RECOMMENDATION:

Staff recommends approval as presented.

SUBMITTED BY and TO BE PRESENTED BY:

Adam Mergener, Director of Public Works for the June 22, 2010 Council meeting


Director of Public Works

REVIEWED BY:


Chris Dick, Finance Director

REVIEWED BY:



City Secretary

APPROVED BY:



Don Hastings, City Manager

REVIEWED BY:



City Secretary

APPROVED BY:



Don Hastings, City Manager

THE STATE OF TEXAS §

Contract

COUNTY OF ELLIS §

This Contract is made and entered into this 8th day of June, 2010 by and between **REYNOLDS ASPHALT AND CONSTRUCTION COMPANY**, hereinafter referred to as "Contractor," and the **CITY OF MIDLOTHIAN, TEXAS**, a municipal corporation located in Ellis County, Texas, hereinafter referred to as "City".

WITNESSETH:

That in consideration of the terms and conditions contained herein, the parties does mutually agree as follows:

I.

Employment of Contractor

Contractor will provide services as described in Contractor's proposal, attached hereto and incorporated herein for all intents and purposes. Contractor will perform as an independent contractor all services under this contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same consulting profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. Where Contractor represents that it has special expertise in one or more areas to be utilized in this contract, then Contractor agrees to perform those special-expertise services to the appropriate local, regional and national professional standards. In the event of discrepancy or conflict between the proposal and this contract, this contract shall have priority. The initial term of this contract will be for two years and can be extended for three (3), one (1) year terms, successively, if both parties agree.

II.

Payment

City agrees to pay Contractor compensation as stated for services in the attached proposal, Invitation to Bid for Asphalt /Pavement Scarifying/Rehabilitation Services. Contractor will bill for the services on a monthly basis in proportion to work completed, or where otherwise appropriate, in accordance with the unit prices in the attached proposal for those services requested by City. Nothing contained in this contract shall require City to pay for any work that is unsatisfactory as determined by City which is not submitted in compliance with the terms of this contract. City shall not be required to make any payments to Contractor when Contractor is in default under this contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which City may have if Contractor is in default, including the right to bring legal action for damages or for specific performance of this contract. Waiver of any default under this contract shall not be deemed a waiver of any subsequent default.

III.

Funding and Non-Appropriation Clause

Contractor recognizes that the continuation of any contract, after the close of or during any given fiscal year of the City of Midlothian, which fiscal year ends on September 30 of each year, shall be subject to Council budget approval of the City of Midlothian providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will actually be adopted as this determination is within the sole discretion of the City Council. Should funding not be approved by the City Council for any given budget year during the contract term, the contract will terminate and become null and void.

IV.

Revisions of Plans and Specifications

In response to changes in needs of the project, City reserves the right to direct substantial revision to the scope of work initially agreed, including changes to the drawings, specifications or other project documents after due approval by City, as City may deem necessary. In such event, City shall pay Contractor equitable compensation for services rendered in making such revisions. When Contractor is directed to make substantial revisions under this section of the contract, Contractor shall provide to City a written proposal for the entire costs involved and the completion time involved in providing the revisions. City shall not knowingly require any revision that is illegal or that violates the professional ethics of Contractor. Prior to Contractor undertaking any substantial revision as

directed by City, City must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

V.

Contract Termination Provisions

This contract may be terminated at any time by the City for any cause by thirty (30) days' notice in writing to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue all services, and Contractor will immediately terminate placing orders or entering into contracts for assistance, supplies, facilities or material in connection with this contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this contract.

VI.

Insurance

Contractor shall, at its own expense, purchase, maintain and keep in force during the term of this contract such insurance as set forth below. Contractor shall not commence work under this contract until it has obtained all the insurance required under this contract and such insurance has been approved by City, nor shall Contractor allow any subcontractor to commence work on its subcontract until all similar insurance of the subcontractor has been obtained and approved. The insurance requirements shall remain in effect throughout the term of this contract. Contractor, at Contractor's sole cost, shall purchase and maintain, during the term of this Agreement, insurance coverage providing not less than the following:

A. Professional Liability: \$500,000 limit per occurrence. The coverage under this policy shall include the contractual liability endorsement. This insurance coverage shall identify if coverage is being provided on an "occurrence" or "claims-made" form. If written on a "claims made" basis, Contractor shall maintain this policy for a period of four (4) years after the completion of the project or shall purchase extended reporting period or "tail" coverage.

B. Comprehensive or Commercial General Liability: \$500,000 combined single limit per occurrence for bodily injury, personal injury or death and property damage. The coverages under this policy shall include those found in the Comprehensive General Liability Broad Form endorsement. This policy shall have no standard coverages removed by exclusions.

C. Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage. Coverage should be provided as a "Code 1," any auto.

D. Workers' Compensation and Employers' Liability: Statutory. Employers Liability policy limits of \$100,000 for each accident, \$500,000 policy limit -Disease.

E. All insurance policies, other than Professional Liability, provided under this contract shall be written on an "occurrence" basis.

F. The City of Midlothian, its employees, agents and designees shall be named as additional insured on the General Liability and Automobile Liability insurance policies. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.

G. Each insurance policy shall be endorsed to state that coverage shall not be canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been provided to the City, or in the event of cancellation because of nonpayment of premium, that the insurer shall give written notice to the City not later than ten (10) days following cancellation.

H. Insurance is to be placed with insurers with a Best rating of no less than A:VII. Insurers must be duly authorized to transact business in the State of Texas.

I. Workers' Compensation and Employers' Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under this contract.

J. Certificates of Insurance shall be submitted on the Acord form only. Certificates and endorsements effecting coverages required by this clause shall be forwarded to:

Purchasing Agent
City of Midlothian
104 West Avenue E
Midlothian, Tx 76065

Upon written request of the City, Contractor shall provide to City certified copies of all required insurance policies.

VII.
Right to Inspect Records

Contractor agrees that City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor involving transactions relating to this contract. Contractor agrees that City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Contractor reasonable advance notice of intended audits. Contractor further agrees to include in subcontract(s), if any, a provision that any subcontractor or subcontractor agrees that City shall, until the expiration of three (3) years after final payment under any subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor or subcontractor involving transactions to the subcontract and further, that City shall have access during normal working hours to all subcontractors or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. City shall give the subcontractors or subcontractor reasonable advance notice of intended audits.

VIII.
Successors and Assigns

City and Contractor each binds itself and its successors, executors, administrators and assigns to the other party of this contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither City nor Contractor shall assign or transfer its interest herein without the prior written consent of the other.

IX.
Indemnification

Contractor does hereby covenant and agree to waive all claims, release, indemnify, defend and hold harmless City and all of its officials, officers, agents, employees and invitees, in both their public and private capacities, from any and all liability, claims, suits, demands or causes of action, including all expenses of litigation and/or settlement which may arise by reason of injury to or death or debt of any person, or for loss of, damage to or loss of use of any property arising out of Contractor's negligent performance of its services in accordance with this contract, and such indemnity will apply to the claims, suits, losses, damages, causes of action or liability to the extent they arise from the negligence or willful misconduct of Contractor or any of its officers, officials, agents, employees or invitees. Also, it is understood by Contractor that such indemnity is indemnity by Contractor to indemnify and protect City from any liability, claims, suits, losses, damages or causes of action due to Contractor's negligence, error or omission. Negligent acts or omissions of the City or its employees are not included in this indemnification.

X.
Severability

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XL

Independent Contractor

Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and the exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XII.
Disclosure**

By signing this contract, Contractor acknowledges to City that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed project and business relationships with abutting property owners. Contractor further agrees that it will make disclosure in writing of any conflicts of interest which develop subsequent to the signing of this contract and prior to final payment under the contract.

**XIII.
Venue**

The parties to this contract agree and covenant that this contract will be enforceable in Midlothian, Texas; and that if legal action is necessary to enforce this contract, exclusive venue will lie in Ellis County, Texas.

**XIV.
Entire Agreement**

This contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written agreement of the parties.

**XV.
Applicable Law**

This contract is entered into subject to the Charter and ordinances of the City of Midlothian, Texas, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and Federal laws. Situs of this contract is agreed to be Dallas County, Texas, for all purposes including performance and execution.

**XVI.
Default**

City reserves the right to terminate this contract immediately upon breach of any term or provision of this contract by Contractor; or if at any time during the term of this contract, Contractor shall fail to commence the work in accordance with the provisions of this contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this contract or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this contract, then City shall have the right, if Contractor shall not cure any such default after thirty (30) days' written notice thereof, to terminate this contract and complete the work in any manner it deems desirable, including engaging the services of other parties therefore. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City of the performance of the balance of the work is in excess of that part of the contract sum which has not therefore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse City for such excess.

**XVII.
Headings**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XVIII.
Equal Employment Opportunity

Contractor shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include but not be limited to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection of training, including apprenticeship.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their representatives duly authorized on the day and year first written above.

**REYNOLDS ASPHALT
AND CONSTRUCTION COMPANY**

BY Ned Tankersley
Signature

WITNESS:

Ned Tankersley
Printed/Typed Name

(Title) Vice President
Printed/Typed Title

75-1792271
Tax Identification Number

CITY OF MIDLOTHIAN, TEXAS

BY _____
Signature

Don Hastings
Printed/Typed Name

City Manager
Printed/Typed Title

APPROVED TO FORM BY DONALD R. STOUT

Attest
Lou Jameson
City Secretary

AGENDA ITEM 2010-207

AGENDA CAPTION:

Consider and act upon an ordinance providing for a curfew for minors under 17 years of age. The ordinance is designed to prohibit the unsupervised and random movement of juveniles in the night time to prevent harm to the juvenile as well as deter crimes otherwise committed by juveniles

ITEM SUMMARY/BACKGROUND: On May 25, 2010, a proposed curfew ordinance was presented for Council's consideration. During the presentation Council requested that the item be tabled until the June 22, 2010 Council meeting. During this time Council requested that public input be sought by the Chief of Police on subject of a nighttime curfew ordinance.

The following steps were taken to receive comments on the proposed ordinance:

1. A copy of the proposed Curfew Ordinance was placed on the City of Midlothian's website.
2. City Staff created a survey seeking approval of disapproval of the proposed ordinance.
3. City Staff sought input on its Facebook and a newly create email account Contactmidlothianpd@midlothian.tx.us for any comments directed to the police department.
3. Midlothian Police Department Staff placed link to the City's web page on its official web page.
4. Midlothian Police Department referenced the curfew ordinance and survey on its Facebook page with a link to the City of Midlothian website.
5. Midlothian Police Department and created a NIXEL alert referencing the City's website and survey
6. The Midlothian Mirror also produced an article discussing the article and referring the public to the City website for their input.

The Results include:

1. Survey: 208 (77.9%) respondents voted yes; 59 (22.1%) respondents voted no for a total 267 votes.
2. One email was received on the newly published email: contactmidlothianpd@midlothian.tx.us providing support for the proposed ordinance.
3. One letter was providing supporting the email.
4. The discussion log on Facebook provided similar dialogue and concerns with the ordinance as was had at the May 25, 2010 Council Meeting. There were opinions supporting the ordinance as well as oposing its adoption with no large advantage to either position.

SPECIAL CONSIDERATION:

Consistent with state law, this ordinance requires the city to review the effects of this ordinance and to conduct a public hearing on the need to continue the ordinance.

FINANCIAL IMPACT/FUNDING SOURCE:

Passage of this curfew ordinance may result in decreased costs to the public and private sectors as a result of reduced night-time vandalism, burglaries, etc.

ATTACHMENTS:

1. Proposed Curfew Ordinance
2. City Attorney's Review
3. Local Government Code Review requirements
4. Excerpts from public input

ALTERNATIVES:

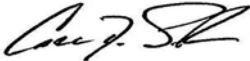
Approve, Deny or Table

RECOMMENDATION:

Staff recommends approval of the proposed curfew Ordinance. Based on community discussion, staff specifically requests that Council review the proposed starting and ending times in the Ordinance to decide whether the curfew should end at 5:00 a.m. (versus 6:00 a.m. as drafted), and whether the curfew should begin one hour later on weekend nights (1:01 a.m. versus 12:01 a.m.)

SUBMITTED BY and TO BE PRESENTED BY:

Carl D. Smith, Chief of Police, for the June 22, 2010 Council meeting



Carl D. Smith, Police Chief

REVIEWED BY:


City Secretary

APPROVED BY:


Don Hastings, City Manager

ORDINANCE NO. 2010-10

AN ORDINANCE OF THE CITY OF MIDLOTHIAN, TEXAS, TO ADD SECTION 8.05.000 CURFEW HOURS FOR MINORS TO THE CODE OF ORDINANCES; PROVIDING A REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, based upon the Ordinance's effects on the community and on the problems the Ordinance was intended to remedy, and after conducting public hearings, the City Council finds that it is in the best interest, health, safety and welfare of the City to implement a Juvenile Curfew Ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS:

SECTION 1. That the Code of Ordinances is hereby amended in part to add Article 8.05.000 Curfew Hours for Minors of the Code of Ordinances of the City of Midlothian to read as follows:

“Sec. 8.05.001. Curfew hours for minors.

(a) *Definitions.* In this article:

(1) *Curfew hours* means:

- a. 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day; and
- b. 12:01 a.m. until 5:00 a.m. on any Saturday or Sunday.

(2) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(3) *Establishment* means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

(4) *Guardian* means:

- a. A person who, under court order is the guardian of the person of a minor;
or

b. A public or private agency with whom a minor has been placed by a court.

(5) *Minor* means any person under 17 years of age.

(6) *Operator* means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

(7) *Parent* means a person who is:

a. A natural parent, adoptive parent, or step-parent of another person; or

b. At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(8) *Public place* means any place to which the public or a substantial group of the public has access and includes, but is not limited to streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) *Remain* means to:

a. Linger or stay; or

b. Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(10) *Serious bodily injury* means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(b) *Offenses.*

(1) A minor commits an offense if such person remains in any public place or on the premises of any establishment within the city during curfew hours.

(2) A parent or guardian of a minor commits an offense if such parent or guardian knowingly permits, or by insufficient control allows the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.

(3) The owner, operator or any employee of an establishment commits an offense if such owner, operator or employee knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) *Defenses.*

(1) It is a defense to prosecution under subsection (b) that the minor was:

- a. Accompanied by the minor's parent or guardian;
- b. On an errand at the direction of the minor's parent or guardian, without any detour or stop;
- c. In a motor vehicle involved in interstate travel;
- d. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- e. Involved in an emergency;
- f. On the sidewalk abutting the minor's residence or abutting the residence of a next door neighbor if the neighbor did not complain to the police department about the minor's presence;
- g. Attending a recreational or social activity supervised by adults who take responsibility for the minors; and, sponsored by a school, the city, or a nonprofit organization that sponsors or provides recreational or social activities for minors; or, going to and returning home therefrom without any detour or stop;
- h. Attending a religious service, activity, or a recreational or social activity sponsored or provided by a religious organization, or going to and returning therefrom without any detour or stop;
- i. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- j. Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code.

(2) It is a defense to prosecution under subsection (b)(3) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) *Enforcement.* Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section

unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (c) is present.

(e) *Penalties.*

(1) A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.

(2) When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection (b) (1) of this section and shall refer the minor to juvenile court.”

SECTION 2. That all provisions of the ordinances of the City of Midlothian in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Midlothian not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the of the City of Midlothian, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. That in accordance with Section 370.002 of the Texas Local Government Code the City Council will:

- (a) within three (3) years of the passage of this ordinance, the City shall review the ordinance's effects on the community and on problems the ordinance or order was intended to remedy;
- (b) conduct public hearings on the need to continue the ordinance; and
- (c) abolish, continue or modify the ordinance.
- (d) Failure to act in accordance with Subsections (a)-(c) shall cause the ordinance to expire.

SECTION 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter require in such cases.

DULY PASSED by the City Council of the City of Midlothian, Texas, on the _____ day of _____, 2010.

APPROVED:

Boyce L. Whatley, Mayor

ATTEST:

Lou Jameson, City Secretary

APPROVED AS TO FORM:

City Attorney

From: Jennie Ciardo [jennie.colvinstout@sbcglobal.net]

Sent: Wednesday, May 19, 2010 10:32 AM

To: Carl Smith

Subject: FW: curfew ordinance

Attachments: image002.jpg; image003.jpg; image002.jpg; image001.jpg; curfew ordinance local govt code.pdf

Carl –

You need not have a public hearing prior to passage.

However, the Ordinance needs to be reviewed prior to 3 years after passage by means of public hearings. [See the verbiage of §370.002, Texas Local Government Code (copy attached)].

I would suggest an additional section incorporating the wording of §370.002.

The rest of the ordinance draft looks ok.

Call if you have any additional questions.

Don

DRS/jc

Jennie Ciardo

Colvin & Stout, P.C.

jennie.colvinstout@sbcglobal.net

From: Don Stout [mailto:colvinstout@sbcglobal.net]

Sent: Tuesday, May 18, 2010 5:15 PM

To: Jennie Ciardo

Subject: FW: curfew ordinance

From: Carl Smith [mailto:Carl.Smith@Midlothian.tx.us]

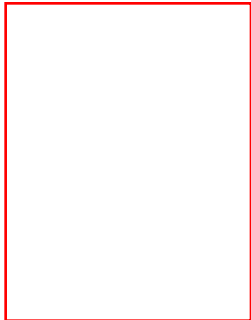
Sent: Tuesday, May 18, 2010 7:05 AM

To: colvinstout@sbcglobal.net

Subject: curfew ordinance

Don,

One question on the ordinance, we took this to the public safety subcommittee and I asked whether or not a public hearing was needed and the consensus was that one was not needed. But the as the ordinance was written in draft it refers to one; is there a requirement under law to conduct a public hearing on this item? If not, would you provide any suggestions on the document you see needed.



Carl D. Smith

Chief of Police

Midlothian Police Department

1150 N. HWY 67

Midlothian, Texas 76065

Wk (972) 775-7610

Cell (214) 957-1120

From: Jennie Ciardo [jennie.colvinstout@sbcglobal.net]

Sent: Wednesday, May 19, 2010 10:32 AM

To: Carl Smith

Subject: FW: curfew ordinance

Attachments: image002.jpg; image003.jpg; image002.jpg; image001.jpg; curfew ordinance local govt code.pdf

Carl –

You need not have a public hearing prior to passage.

However, the Ordinance needs to be reviewed prior to 3 years after passage by means of public hearings. [See the verbiage of §370.002, Texas Local Government Code (copy attached)].

I would suggest an additional section incorporating the wording of §370.002.

The rest of the ordinance draft looks ok.

Call if you have any additional questions.

Don

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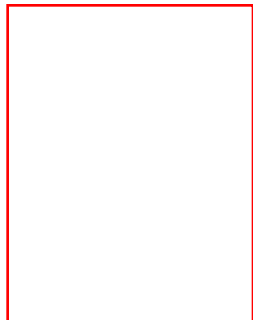
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