

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

**Tuesday, October 26, 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

2010-388 Announcements/Presentations

- a. Community Affairs calendar
- b. Receive presentation from Midlothian Middle School Problem Solvers
- c. Receive presentation regarding Honor Flight trip to Washington D.C.
- d. Receive presentation from Pastor Bruce Prindle regarding Help Hope Build Haiti Project
- e. 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.*

2010-389 Consider and act upon minutes from City Council meetings of October 12, 2010

2010-390 Consider and act upon a professional service agreement with Bill Marquis, Marquis Restoration & Preservation (Case NO. M01-2010-08), to perform repairs to the historic Larkin Newton Log Cabin in an amount not to exceed \$60,000

**REGULAR AGENDA**

2010-391 Citizens to be Heard

2010-392 Receive update and review Ordinance 2010-01 regarding temporary reduction of impact fee rates for construction of single family residences within the City of Midlothian, and amend ordinance to remove building permit cap

**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 551.072 Real Estate: Deliberate and consider the acquisition of real property necessary for roadway and parks improvement projects
2. Section 551.071 Legal: Consultation with attorney regarding City of Midlothian v. Randall Denton, MidTexas International Center, Inc., Texas Properties Trust and Trade Zone Operations, Inc.
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 551.071 Legal: Consultation with attorney regarding Cause No. 08-C-3999, Ken Chambers v. Boyce Whatley, Steve Massey, Joe Frizzell and the City of Midlothian, pursuant to attorney's ethical duty to advise City regarding such matters
5. Section 551.071 Legal: Consultation with attorney regarding Cause No. 3:10-cv-01521-K, Paul Nichols v. City of Midlothian

6. Section 551.087 Deliberation regarding economic development negotiations
7. Section 551.074(a)(1) Personnel: City Manager annual evaluation

### **REGULAR AGENDA**

- 2010-393 Action resulting from Executive Session, Item #1: Real Estate/Roadway and Parks
- 2010-394 Action resulting from Executive Session, Item #2: Randall Denton, et al
- 2010-395 Action resulting from Executive Session, Item #3: Texas Central Business Lines
- 2010-396 Action resulting from Executive Session, Item #4: Ken Chambers, et al
- 2010-397 Action resulting from Executive Session, Item #5: Paul Nichols
- 2010-398 Action resulting from Executive Session, Item #6: Economic Development
- 2010-399 Action resulting from Executive Session, Item #7: City Manager evaluation
- 2010-400 Adjourn

I, Tammy Varner, Deputy 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 22<sup>nd</sup> day of October, 2010 at or before 5:00 p.m.

  
\_\_\_\_\_  
Tammy Varner, Deputy 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 2010-389

**AGENDA CAPTION:**

Consider and act upon minutes from City Council meetings of October 12 and 13, 2010

**ITEM SUMMARY/BACKGROUND:**

Minutes from the October 12<sup>th</sup> and 13<sup>th</sup> Council meetings are submitted for approval or correction

**SPECIAL CONSIDERATION:**

N/A

**FINANCIAL IMPACT/FUNDING SOURCE:**

N/A

**ATTACHMENTS:**

1. Minutes from Regular Meeting of October 12, 2010
2. Minutes from Called Meeting of October 13, 2010

**ALTERNATIVES:**

Approve or correct

**RECOMMENDATION:**

Approve as submitted

**SUBMITTED, REVIEWED BY AND TO BE PRESENTED BY:**

Lou Jameson, City Secretary, for the October 26, 2010 City Council Meeting



\_\_\_\_\_  
City Secretary

**APPROVED BY:**

\_\_\_\_\_  
Don Hastings, City Manager

**MINUTES**  
**REGULAR COUNCIL MEETING**  
**OCTOBER 12, 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 open to the public and notice of said meeting 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 the full Council present. Councilmember Kyle gave the invocation and led in the pledges.

**2010-365 ANNOUNCEMENTS/PRESENTATIONS**

**a. Community Affairs calendar**

Saturday, October 16 – Fall Festival, Farmers Market, Electronic Recycling; General Election Early Voting dates – October 18 thru 29, Election Day – November 2.

**b. Proclamation recognizing Breast Cancer Awareness Month**

Delaine Fletcher accepted the Proclamation emphasizing the value of early detection and treatment.

**c. Proclamation recognizing National Hospice and Caregivers Month**

The Proclamation was in recognition of the invaluable support of caregivers in preserving the dignity of terminally ill patients.

**d. TCEQ award presentation to the Water Treatment Plant**

Jack Schultz announced three prestigious awards earned by WTP personnel for exceptional and consistent performance in water treatment.

**e. Administrative Announcements related to personnel**

None were received.

**CONSENT AGENDA**

**2010-366 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETING OF SEPTEMBER 28, 2010**

**2010-367 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE ANNUAL CHRISTMAS PARADE AND TREE LIGHTING AT KIMMEL PARK HOSTED BY THE MIDLOTHIAN DOWNTOWN BUSINESS ASSOCIATION AND THE CITY OF MIDLOTHIAN ON MONDAY, DECEMBER 6, 2010 (IF INCLEMENT WEATHER CANCELS THE EVENT, THE EVENT WILL BE RESCHEDULED TO THE FOLLOWING MONDAY, DECEMBER 13, 2010), IN ACCORDANCE WITH ZONING REQUIREMENTS FOR SPECIAL EVENTS AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 89-13, AS AMENDED, SECTION 4.4 (USE TABLE) (CASE NO. RES01-2010-01)**

**2010-368 CONSIDER AND ACT UPON APPROVAL OF AN ADMINISTRATIVE SERVICES CONTRACT BETWEEN THE CITY OF MIDLOTHIAN AND THE MIDLOTHIAN COMMUNITY DEVELOPMENT CORPORATION**

Item 2010-367 was moved to the Regular Agenda at the request of Councilmember Kyle. Mayor pro tem Frizzell moved to approve the amended Consent Agenda. Motion was seconded by Councilmember Houston and carried unanimously (7-0).

## REGULAR AGENDA

**2010-367 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE ANNUAL CHRISTMAS PARADE AND TREE LIGHTING AT KIMMEL PARK HOSTED BY THE MIDLOTHIAN DOWNTOWN BUSINESS ASSOCIATION AND THE CITY OF MIDLOTHIAN ON MONDAY, DECEMBER 6, 2010 (IF INCLEMENT WEATHER CANCELS THE EVENT, THE EVENT WILL BE RESCHEDULED TO THE FOLLOWING MONDAY, DECEMBER 13, 2010), IN ACCORDANCE WITH ZONING REQUIREMENTS FOR SPECIAL EVENTS AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 89-13, AS AMENDED, SECTION 4.4 (USE TABLE) (CASE NO. RES01-2010-01)**

*Councilmember Kyle abstained from discussion and vote due to a potential conflict of interest.*

Councilmember Houston moved to approve Item 2010-367 as presented. Motion was seconded by Councilmember Miller and carried by a vote of 6-0-1 with Councilmember Kyle abstaining.

## PUBLIC HEARINGS

**2010-369 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN APPLICATION TO AMEND MEADOWS AT LONGBRANCH PLANNED DEVELOPMENT (PD-16) ORDINANCE 2001-19, EXHIBIT C (NARRATIVE AND GRAPHIC, NUMBER #3) DEVELOPMENT REGULATIONS, WHICH CURRENTLY REQUIRES SIDE-ENTRY GARAGES ON ALL LOTS AND REQUESTING TO REVISE SAID LANGUAGE TO INCLUDE THE ADDITIONAL OPTION OF FRONT LOADING GARAGES WITH UPGRADED FRONT ELEVATION STANDARDS AND AN INCREASE TO THE MINIMUM RESIDENTIAL FLOOR AREA TO 2,000 SF FOR A MINIMUM OF 75% OF THE 116 UNDEVELOPED LOTS LOCATED IN MEADOWS AT LONGBRANCH, PHASE 1, BLOCK 2, LOT 2 AND BLOCK 8, LOT 2, PHASE 2, BLOCK 2, LOTS 36 & 40, BLOCK 6, LOT 13, BLOCK 7, LOTS 1 THRU 6, BLOCK 8, LOTS 3 THRU 6, BLOCK 9, LOTS 3 THRU 7, BLOCK 10, LOTS 13 THRU 22, PHASE 3, BLOCK 8, LOTS 16 & 22, BLOCK 9, LOTS 1 & 2, BLOCK 11, LOTS 14 & 16, BLOCK 12, LOTS 5 THRU 9 & 12, BLOCK 13, LOTS 5 & 6 AND 9 & 10, AND ALL OF PHASE 4; PROPERTY IS LOCATED NORTH OF FM 1387 AND WEST OF BRYSON LANE, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z06-2009-57)**

Mayor Whatley opened the Public Hearing continued from September 28. Mr. Garfield advised that no opposition was received to the amended request. With no public comment received, Mayor Whatley closed the Public Hearing.

Councilmember Houston moved to deny the request for front-loading garages in Phases 1, 2, and 3 and to approve the request for front-loading garages in Phase 4. Motion was seconded by Councilmember Massey and carried unanimously (7-0).

**2010-370 CONTINUE A PUBLIC HEARING TO CONSIDER AND ACT UPON AN APPLICATION TO AMEND PLANNED DEVELOPMENT 36, 810 E. MAIN STREET, ORDINANCE 2006-17, REQUESTING TO KEEP THE SAME NURSERY/ANCILLARY USES BUT INCREASE THE CURRENT  $\pm 1.23$  ACRES SURVEY BOUNDARY, WITH AN ADDITIONAL  $\pm 4.03$  ACRES CURRENTLY ZONED SINGLE FAMILY THREE (SF3) DISTRICT, FOR A TOTAL OF  $\pm 5.26$  ACRES; THE ADDITIONAL  $\pm 4.03$  ACRES ARE LOCATED SOUTH OF E. MAIN STREET AND EAST OF 14<sup>TH</sup> STREET, IN THE CITY OF MIDLOTHIAN (CASE Z05-2009-56)**

Mayor Whatley opened the Public Hearing continued from September 28 and Mr. Garfield presented the request recommended for approval by P&Z on August 17, subject to ten conditions. With no public comment received, Mayor Whatley closed the Public Hearing.

Councilmember Kyle moved to approve Item 2010-370 subject to the ten conditions recommended by P&Z and staff. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

## REGULAR AGENDA

### **2010-371 CITIZENS TO BE HEARD**

None were received.

### **2010-372 CONSIDER AND ACT UPON APPROVAL OF THE ACTIONS TAKEN BY THE MIDLOTHIAN COMMUNITY DEVELOPMENT CORPORATION TO PROCEED WITH PREPARATION OF DOCUMENTS IN RESPECT TO THE REFUNDING OF OUTSTANDING MIDLOTHIAN COMMUNITY DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, SERIES 2001**

Mr. Dick presented the request approved by MCDC on October 5 and due to return to Council on November 9 for consideration and final approval.

Mayor pro tem Frizzell moved to approve Item 2010-372 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (7-0).

### **2010-373 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING FINANCIAL ASSISTANCE FROM THE TEXAS DEPARTMENT OF TRANSPORTATION FOR CERTAIN IMPROVEMENTS TO THE MIDWAY REGIONAL AIRPORT, AND TO HAVE THE TEXAS DEPARTMENT OF TRANSPORTATION ACT AS THE CITY AGENT FOR THE IMPLEMENTATION OF THESE IMPROVEMENTS. (CASE NO. RES02-2010-02)**

*Councilmember Miller abstained from discussion and vote due to a potential conflict of interest.*

Andy Biery presented the request for the Airport Development Plan Study estimated to cost \$100,000, with the City of Midlothian to be responsible for 5% of the total cost.

Mayor pro tem Frizzell moved to approve Item 2010-373 as presented. Motion was seconded by Councilmember Wickliffe and carried by a vote of 6-0-1 with Councilmember Miller abstaining.

*Items 2010-374 and 2010-375 were combined for discussion and action*

### **2010-374 CONSIDER AND ACT UPON A PROFESSIONAL SERVICE AGREEMENT WITH FREESE AND NICHOLS (CASE NO. M01-2010-03), TO PREPARE AN UPDATE OF THE IMPACT FEE PROGRAM'S LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENT PLAN FOR ROADWAY FACILITIES IN AN AMOUNT NOT TO EXCEED \$40,000**

### **2010-375 CONSIDER AND ACT UPON A PROFESSIONAL SERVICE AGREEMENT WITH FREESE & NICHOLS, INC., TO PREPARE AN UPDATE OF THE CITY'S WATER AND WASTEWATER IMPACT FEE PROGRAM IN AN AMOUNT NOT TO EXCEED \$55,500**

Mr. Garfield and Mr. Adams presented the two interrelated Items requiring review and updates to land use assumptions and capital improvement plans every five years. The completed project is expected to take six to eight months and will then require adoption by Council.

Councilmember Miller moved to table both Items in order to allow staff time to shop around. Motion died for lack of a second. Mayor pro tem Frizzell moved to approve Items 2010-374 and 2010-375 as presented. Motion was seconded by Councilmember Houston and carried by a vote of 6-1 with Councilmember Miller opposed.

### **2010-376 RECEIVE UPDATE AND REVIEW ORDINANCE 2010-01 TEMPORARY REDUCTION OF IMPACT FEE RATES FOR CONSTRUCTION OF SINGLE FAMILY RESIDENCES WITHIN THE CITY OF MIDLOTHIAN**

Ryan Spencer presented statistics resulting from the temporary reduction indicating 130 single-family permits issued and \$365,419 in fees waived year-to-date. The report confirmed that Midlothian has rebounded quicker than surrounding communities and now has the highest percentage of market share of new home construction in Ellis County since 2002.

**2010-377 CONSIDER AND ACT UPON STAFF'S REQUEST TO ORDER AND LEASE TWO CHEVROLET TAHOE POLICE PACKAGE PURSUIT VEHICLES AS APPROVED IN THE FY 2010-11 BUDGET**

Chief Smith explained cost-effectiveness and versatility of the Tahoe compared to other vehicles in the Police Department fleet.

Mayor pro tem Frizzell moved to approve Item 2010-377 as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

**2010-378 CONSIDER AND ACT UPON AN ORDINANCE REPEALING ORDINANCES 2008-42 AND 2007-23 AND ADOPTING AN ORDINANCE, SPECIAL DESIGN AND CONSTRUCTION STANDARDS FOR THE EAGLE FORD (SOILS) GROUP BY ESTABLISHING POLICY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A PENALTY THAT ANY VIOLATION OF THE TERMS OF THIS ORDINANCE IS DECLARED TO BE A MISDEMEANOR, AND ANY PERSON FOUND TO BE GUILTY THEREOF SHALL BE PUNISHABLE BY A FINE NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000.00); EACH DAY THAT SUCH VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE AND SHALL BE PUNISHABLE ACCORDINGLY; PROVIDING FOR A SEVERABILITY CLAUSE; AND SETTING AN EFFECTIVE DATE**

Mr. Adams presented the update containing a substantial change to require flexible pavement in areas with highly expansive soils.

Councilmember Houston moved to approve Item 2010-378 as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

*Council moved to Executive Session at 7:40 p.m. for the purpose of discussing Items 1 and 2, and with the following present: Mayor Whatley, Mayor pro tem Frizzell, Councilmembers Wickliffe, Houston, Kyle, Miller, and Massey; City Manager, City Attorney, Planning Director, City Engineer, Comprehensive Planning Manager, and Parks Manager*

**EXECUTIVE SESSION**

- 1. SECTION 551.072 REAL ESTATE: DELIBERATE AND CONSIDER THE ACQUISITION OF REAL PROPERTY NECESSARY FOR ROADWAY AND PARKS IMPROVEMENT PROJECTS**
- 2. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CITY OF MIDLOTHIAN V. RANDALL DENTON, MIDTEXAS INTERNATIONAL CENTER, INC., TEXAS PROPERTIES TRUST AND TRADE ZONE OPERATIONS, INC.**
- 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 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 08-C-3999, KEN CHAMBERS V. BOYCE WHATLEY, STEVE MASSEY, JOE FRIZZELL AND THE CITY OF MIDLOTHIAN, PURSUANT TO ATTORNEY'S ETHICAL DUTY TO ADVISE CITY REGARDING SUCH MATTERS**

5. SECTION LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE  
551.071 NO. 3:10-CV-01521-K, PAUL NICHOLS V. CITY OF MIDLOTHIAN
6. SECTION DELIBERATION REGARDING ECONOMIC DEVELOPMENT  
551.087 NEGOTIATIONS

*Council reconvened in Regular Session at 9:10 p.m. with no action taken in Executive Session.*

<b>REGULAR AGENDA</b>
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**2010-379 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: REAL ESTATE/ROADWAY AND PARKS**

No action was taken following Executive Session.

**2010-380 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: RANDALL DENTON, ET AL**

No action was taken following Executive Session.

**2010-381 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: TEXAS CENTRAL BUSINESS LINES**

The Item was not discussed in Executive Session nor was action taken.

**2010-382 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: KEN CHAMBERS, ET AL**

The Item was not discussed in Executive Session nor was action taken.

**2010-383 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: PAUL NICHOLS**

The Item was not discussed in Executive Session nor was action taken.

**2010-384 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #6: ECONOMIC DEVELOPMENT**

The Item was not discussed in Executive Session nor was action taken.

**2010-385 ADJOURN**

With there being no further business to discuss, Mayor Whatley adjourned the meeting at 9:10 p.m.

ATTEST:

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Boyce L. Whatley, Mayor

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Lou Jameson, City Secretary



**MINUTES  
CALLED COUNCIL MEETING  
OCTOBER 13, 2010**

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

Boyce L. Whatley	§	Mayor
Bill Houston	§	Councilmember Place 2
Jason Kyle	§	Councilmember Place 3
Joe Frizzell	§	Mayor Pro Tem Place 4

*Absent: Councilmembers Wickliffe, Miller, Massey*

**REGULAR AGENDA – 6:00 P.M.**

Mayor Whatley called the meeting to order at 6:10 p.m. with notice of the meeting duly posted and a quorum present.

**2010-386 SALES TAX TRAINING SESSION TO BE CONDUCTED BY A REPRESENTATIVE FROM THE STATE OF TEXAS ATTORNEY GENERAL'S OFFICE**

The training session was hosted by CEDM and the program was conducted by:

Jeff L. Moore	Zindia T. Thomas
Brown & Hofmeister, L.L.P.	Office of the Attorney General
Richardson, Texas	Austin, Texas

Elements reviewed and discussed were:

- Definition and purpose of Type A and Type B sales tax
- Implementation requires election
- Performance agreement requirements
- Project limitations outside city limits
- Role of Council and Corporation in administering and overseeing Type A and Type B sales tax
- Board of Directors – composition, terms of office, residency requirements
- City Council – appointment of directors, authority
- Use of sales tax proceeds
- Open Meetings Act compliance
- Public Information Act compliance
- Economic Development Corporation annual reports
- Permissible projects for each Type sales tax
- Permissible infrastructure projects
- Permissible public parks, maintenance and operation, transportation, retail projects

Corporation for Economic Development members present: Danny Rodgers, Ron Graham, Tim Tobey, Mike Houston, and director Frank Viso. Chamber of Commerce staff present: Sarah Garcia and Debbie Wolf.

**2010-387 ADJOURN**

With there being no further business to discuss, Mayor Whatley adjourned the meeting at 8:00 p.m.

ATTEST:

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Boyce L. Whatley, Mayor

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Lou Jameson, City Secretary



## AGENDA ITEM 2010-390

**AGENDA CAPTION:**

Consider and act upon a professional service agreement with Bill Marquis, Marquis Restoration & Preservation (Case NO. M01-2010-08), to perform repairs to the historic Larkin Newton Log Cabin in an amount not to exceed \$60,000.

**ITEM SUMMARY/ BACKGROUND:**

The Larkin Newton Log Cabin is a physical representation of Midlothian's history. It has been a focal point of Heritage Park for the past fifteen years. Weather conditions and materials used during the last restoration effort have contributed to the deterioration of the structure. The cost estimate for the repair and preservation of the cabin is ninety-thousand dollars (\$90,000). The project has been split into two phases. The first phase will cost sixty-thousand dollars (\$60,000) and will address the cabin exterior. The second phase will cost thirty-thousand dollars (\$30,000) and will address the roof of the cabin. The 4B board approved sixty-thousand dollars (\$60,000) for phase one at its August 26, 2010 meeting. The City Council approved this grant on September 14, 2010.

The services of Bill Marquis, Marquis Restoration & Preservation, have been secured to perform the needed repairs. Mr. Marquis has restored over three hundred (300) log houses or cabins in his career and is considered one of the premier restoration experts in the state of Texas. His work can be found in Southlake, Lewisville, Farmers Branch and Irving to name just a few cities. The work that will be performed consists of the following:

- 1: Remove all cement chinking between logs inside and outside
- 2: Wash logs in vinegar/water solution to kill algae and remove lime residue
- 3: Apply new chinking made of local mud and straw
- 4: Repair or replace rotted logs
- 5: Repair doors and shutters as needed
- 6: Replace metal hinges with oak wood hinges
- 7: Install larger vent holes in rock foundation and cover with hand forged iron grills

All wood will be hand cut and milled to obtain the original look of the cabin. The wood will also be treated with a fire retardant inside and outside.

**SPECIAL CONSIDERATION:** N/A**FINANCIAL IMPACT/ FUNDING SOURCE:**

The Midlothian Community Development Corporation (4B) will issue \$60,000 from its Special Projects line item 625-600-955.

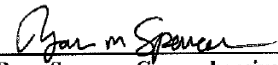
**ATTACHMENTS:**

1. Professional Services Agreement
2. City attorney review and comments

**ALTERNATIVES:** Approve or deny**RECOMMENDATION:**

Staff recommends approval of the attached Professional Service Agreement.

**SUBMITTED AND PRESENTED BY:** Ryan Spencer, Comprehensive Planning Manager  
Tuesday, October 26, 2010, City Council Meeting

  
\_\_\_\_\_  
Ryan Spencer, Comprehensive Planning Manager


**REVIEWED BY:** John A. Garfield, Director of Planning  
Tuesday, October 26, 2010, City Council Meeting

  
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John A. Garfield, AICP  
Director of Planning

  
\_\_\_\_\_  
Chris Dick, Finance Director

  
\_\_\_\_\_  
Tammy Varner, Deputy City Secretary

**APPROVED BY:**

  
\_\_\_\_\_  
Don Hastings, City Manager

**ATTACHMENT ONE**

**THE STATE OF TEXAS §**

**Contract**

**COUNTY OF ELLIS §**

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ hereinafter referred to as "Contractor," and the **CITY OF MIDLOTHIAN, TEXAS**, a municipal corporation located in Ellis County, Texas, hereinafter referred to as "City".

W I T N E S S E T H:

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 as Attachment B 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.

**II.**

**Payment**

City agrees to pay Contractor compensation as stated in the attached proposal not to exceed the amount to award a contract in the amount of \$60,000.

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.**

**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.

**IV.**

**Hold Harmless Agreement**

The Contractor shall not commence work under this contract until it has signed a hold harmless agreement authorizing the a release of liability to the City of Midlothian and has been approved by the City of Midlothian, nor shall Contractor allow any subcontractor to commence work on its subcontract until the subcontractor has signed a

hold harmless agreement and been approved. The hold harmless agreement shall remain in effect throughout the term of this contract. Please Attachment A.

## **V.**

### **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.

## **VI.**

### **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.

## **VII.**

### **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 gross negligence, error or omission. Gross negligent acts or omissions of the City or its employees are not included in this indemnification.

## **VIII.**

### **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.

## **IX.**

### **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 respondent 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.

## **X.**

## **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.

## **XI. 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.

## **XII. 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.

## **XIII. 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 Ellis County, Texas, for all purposes including performance and execution.

## **XIV. 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.

## **XV. 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.

## **XVI. 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.

(COMPANY NAME).

BY \_\_\_\_\_  
Signature

**WITNESS:**

\_\_\_\_\_  
Printed/Typed Name

(Title)  
Printed/Typed Title

\_\_\_\_\_  
Tax Identification Number

**CITY OF MIDLOTHIAN, TEXAS**

BY \_\_\_\_\_  
Signature

Don Hastings  
Printed/Typed Name

City Manager  
Printed/Typed Title

\_\_\_\_\_  
Attest  
**Lou Jameson**  
City Secretary

\_\_\_\_\_  
APPROVED TO FORM BY DONALD R. STOUT

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**AUTHORIZATION FOR RELEASE  
OF LIABILITY**

I, Vendor / person agree that the City of Midlothian shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the (building, structure, equipment) , or any part thereof, whether caused by any defect in any structure or other improvement thereon or in any equipment or other facility therein, or caused by or arising from any act or omission of ~~Vendor / person or any of Vendor/ person~~ agents, employees, licensees, or invitees, or by or from any accident on the City's property or any fire or other casualty thereon, or occasioned by ~~the failure of Vendor/person~~ to maintain the premises in safe condition, or arising from any other cause whatsoever; except loss, damage or injury caused by the City, its agents, representatives, or employees and Vendor / person hereby waives all claims and demands against City for any such loss, damage, or injury of Vendor/ person, and hereby agrees to indemnify and hold the City entirely free and harmless from all liability for any such loss, damage, or injury of other persons, and from all costs and expenses arising there from, except loss, damage or injury caused by the City, its agents, representatives, or employees.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_





## MARQUIS RESTORATION & PRESERVATION

PROPOSAL FOR THE PRESERVATION OF A LOG HOUSE FOR THE CITY OF MIDLOTHION, TEXAS.

STEP #1 WILL BE TO REMOVE ALL CEMENT FROM BETWEEN LOGS INSIDE & OUT - BECAUSE THIS IS WHAT HAS CAUSED THE DAMAGE.

THEN THE LOGS WILL BE WASHED WITH A SOLUTION OF VINEGAR & WATER TO KILL THE -IME FROM THE USE OF CEMENT & ALGAE.

STEP #2 REPAIR OR REPLACE ALL ROTTED LOGS & OTHER MATERIAL, NO ORIGINAL MATERIAL WILL BE THROWN AWAY THAT CAN BE REPAIRED.

DOORS & SHUTTERS WILL BE REPAIRED & SAVED THEN THE MODERN STEEL HINGES WILL BE REPLACED WITH HAND MADE OAK WOODEN HINGES OF THE PERIOD.

2 VENT HOLES WILL BE MADE IN ROCK FOUNDATION ON EACH SIDE OF HOUSE & COVERED WITH HAND FORGED IRON WORK SO AS TO LET AIR CIRCULATE UNDER HOUSE

NO LUMBER YARD MATERIAL OR CEMENT PRODUCTS WILL BE USED. OAK WOODEN PEGS & HAND MADE NAILS OF THE 1840-50 PERIOD WILL BE USED THROUGH OUT.

**From:** Ryan Spencer  
**To:** Tammy Varner;  
**Subject:** FW: contract for Don Stout's review  
**Date:** Wednesday, October 20, 2010 12:04:12 PM  
**Attachments:** Professional Service Agreement Master revised101310.doc

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I have made the corrections noted...

Ryan Spencer, AICP  
Comprehensive Planning Manager  
Planning Department  
City of Midlothian  
(p) 972.775.7168  
(f) 972.775.7171

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**From:** Jennie Ciardo [mailto:[jennie.colvinstout@sbcglobal.net](mailto:jennie.colvinstout@sbcglobal.net)]  
**Sent:** Tuesday, October 19, 2010 3:08 PM  
**To:** Ryan Spencer  
**Cc:** Don Hastings; John Garfield  
**Subject:** FW: contract for Don Stout's review

Ryan –

I have reviewed the above.

I would offer the following:

1. Paragraph VII – Insert “gross” prior to negligent in last sentence;
2. Paragraph XII – “Ellis” instead of “Dallas”;

Rest is well-done.

Call if you have any questions.

Thanks.

Don

DRS/jc

*Jennie Ciardo*  
*Colvin & Stout, P.C.*  
*jennie.colvinstout@sbcglobal.net*

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**From:** Ryan Spencer [mailto:Ryan.Spencer@Midlothian.tx.us]  
**Sent:** Friday, October 15, 2010 10:37 AM  
**To:** Jennie Ciardo  
**Cc:** John Garfield  
**Subject:** contract for Don Stout's review

Jennie,

Can you please forward the attached contract to Don Stout for his review? This contract will be heard by City Council on October 26<sup>th</sup>.

Regards,

Ryan Spencer, AICP  
Comprehensive Planning Manager  
Planning Department  
City of Midlothian  
(p) 972.775.7168  
(f) 972.775.7171



## AGENDA ITEM 2010-391

**AGENDA CAPTION:**

Citizens To Be Heard

**ITEM SUMMARY/BACKGROUND:**

Citizens who have registered with the City Secretary may address Council with comments and/or concerns.

**SPECIAL CONSIDERATION:**

N/A

**FINANCIAL IMPACT/FUNDING SOURCE:**

N/A

**ATTACHMENTS:**

N/A

**ALTERNATIVES:**

N/A

**RECOMMENDATION:**

N/A



## AGENDA ITEM 2010-392

### AGENDA CAPTION:

Receive update and review Ordinance 2010-01 regarding temporary reduction of impact fee rates for construction of single family residences within the City of Midlothian, and amend ordinance to remove building permit cap.

### ITEM SUMMARY/BACKGROUND:

The City Council approved the suspension of impact fees for single family home construction on January 12, 2010 (Ord. 2010-01). The following conditions were set by the ordinance:

- 1: The suspension of impact fees apply only to final platted lots.
- 2: No individual homebuilder or homebuilding company may receive more than thirty (30) building permits under the impact fee discount program.
- 3: All single-family homes receiving a discounted impact fee must qualify for a plumbing rough inspection within ninety (90) days.
- 4: The suspension of roadway and utility impacts fees will be for a twelve (12) month period.
- 5: The City Council will review the effectiveness of the program after nine (9) months and/or when total cumulative revenues foregone reach \$400,000.
- 6: Based on City Council review the program may be terminated or amended, but will automatically end when total cumulative revenues foregone reach \$738,416.

### ANALYSIS:

Since the inception of the impact fee waiver program in January, one-hundred and thirty (130) single-family house permits have been issued. As of September 30, \$365,419.25 in impact fees have been foregone. These permits have been issued to twenty-three (23) separate home builders; please see Attachment 1 for a complete list. The top three homebuilders in 2010 account for fifty-two (52%) of the building permits issued. One homebuilder has already reached the thirty permit cap and possibly two others will reach the cap in the next couple of months before the termination of the program in January 2011. It is recommended that the cap of thirty building permits per builder be removed to extend the effectiveness of this program.

### ATTACHMENTS:

1. List of homebuilders
2. Proposed ordinance amendment

### ALTERNATIVES:

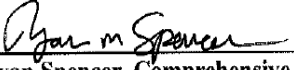
1. Approve or Deny

### RECOMMENDATION:

Staff recommends approval of this agenda item as presented.

**PREPARED AND PRESENTED BY:**

Ryan Spencer, Comprehensive Planning Manager  
Tuesday, October 26, 2010 City Council Meeting

  
\_\_\_\_\_  
Ryan Spencer, Comprehensive Planning Manager

**REVIEWED BY:** John A. Garfield, Director of Planning  
Tuesday, October 26, 2010, City Council Meeting

  
\_\_\_\_\_  
John A. Garfield, AICP  
Director of Planning

**REVIEWED BY:**

  
\_\_\_\_\_  
Tammy Varner, Deputy City Secretary

**APPROVED BY:**

  
\_\_\_\_\_  
Don Hastings, City Manager

**ATTACHMENT 1**

<b>TABLE 1</b>	
<b>Builder</b>	<b>Permits</b>
DR Horton Homes	28
Bloomfield Homes	21
J Houston Homes	18
First Texas Homes	11
Legendary Homes	5
Glacier Homes	4
Sharp Image Homes	4
AGC Homes	3
Arcadian Homes	3
Kenton Homes	3
Mystic Oaks Homes	2
Olsen Homes	2
Robbie Hale Homes	2
Foshea Construction	1
Emerson Homes	1
Hopkins Custom Homes	1
Jim Walker Homes	1
McKeever Construction	1
Mulvaney Construction	1
Reliable Custom Homes	1
S&K Homes	1
Value Builders	1

**ORDINANCE NUMBER 2010-XX**

**AN ORDINANCE AMENDING ORDINANCE 2010-01 (“TEMPORARY REDUCTION OF IMPACT FEE RATES FOR CONSTRUCTION OF SINGLE FAMILY RESIDENCES WITHIN THE CITY OF MIDLOTHIAN”), AS ESTABLISHED BY ORDINANCE NO. 99-12 AS AMENDED BY ORDINANCE NOS. 2000-23, 2001-63, 2003-20, 2003-24, 2003-58, 2006-49; PROVIDING FOR A TEMPORARY REDUCTION OF IMPACT FEES OTHERWISE APPLICABLE AND COLLECTED FOR THE CONSTRUCTION OF SINGLE FAMILY RESIDENCES ON LOTS PLATTED AS OF THE EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the Nation has witnessed the greatest domestic and world wide economic recession since the Great Depression; and,

**WHEREAS**, the City of Midlothian, like many other cities, has been subject to a decline in residential construction of approximately 75%; and,

**WHEREAS**, the City of Midlothian has over 700 residential platted lots served with sewer, water, and/ or roadways that are now ready for the construction of single family homes; and,

**WHEREAS**, on November 10, 2009, the City Council appointed Development Incentives Group to evaluate local construction trends and recommend alternative incentives to revitalize the single family home construction industry; and,

**WHEREAS**, Congress recently extended incentive programs for first time home buyers and buyers of new single family homes until June 30, 2010; and,

**WHEREAS**, it has been determined that the temporary waiver of residential impact fees will provide an additional needed stimulus for single family home construction; and,

**WHEREAS**, the City Council held a special workshop on December 5, 2009 to discuss the possible suspension of impact fees as a means of stimulating desired growth in Midlothian; and,

**WHEREAS**, a meeting was held before the City Council and testimony was taken on January 12, 2010 to consider a proposal to suspend the collection of sewer, water, and/or road impact fees for single family home construction; and,

**WHEREAS**, the City published a public information notice in a newspaper of general circulation within the City; and,

**WHEREAS**, the City Council finds that, due to current conditions of the economy and area housing market, the collection of impact fees from new single family construction



significantly curtails and restricts the development of existing residential lots within the City;  
and,

**WHEREAS**, the City Council finds that temporary non-collection of such fees will not substantially impact current related capital projects or existing bond payment obligations, based on the adequate size of the Utility Fund unreserved fund balance;

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

**SECTION 1. Applicability.** This Ordinance shall apply to the collection of wastewater, water and roadway impact fees that are to be assessed and which otherwise are due for the construction of single family dwelling units on lots that were final-platted and recorded as of the effective date of this Ordinance.

**SECTION 2. Fee Collection Schedule.** This Ordinance shall suspend the collection of applicable sewer, water and roadway impact fees for single family dwelling units for a period not to exceed 12 months from the effective date of this Ordinance (unless otherwise extended by Ordinance). For the first twelve months, the City shall forego collection of 100% of all applicable impact fees otherwise due under Schedule 2 of Ordinance No. 2006-49, per the terms and conditions of this Ordinance. Schedule 2 of Ordinance No. 2006-49 is hereby amended to read as appears in Exhibit 1 attached hereto and incorporated by reference herein. ~~In no case, however, shall an individual homebuilder or homebuilding company be permitted to receive more than thirty (30) building permits under the impact fee discount program.~~

**SECTION 3. Automatic Review and Termination.** The City Council shall review the effectiveness of this Ordinance and its impact fee discount program when total cumulative revenues foregone under this Ordinance reach \$400,000, as measured by the difference between the rates applicable under Ord. No. 2006-49 and the rates established by Section 2 of this Ordinance; and/or, when nine (9) months have elapsed since the effective date of this Ordinance. Based on the outcome of this City Council review, the Council may terminate or amend this Ordinance and the impact fee rates established in Schedule 2. Nonetheless, the fee collection provisions of Section 2 of this Ordinance shall automatically terminate when the first of the following conditions is met: (a) a total of \$738,416 of impact fee revenue is foregone, measured as the difference between the rates applicable under Ord. No. 2006-49 and the rates established by Section 2 of this Ordinance; or (b) 12 months have elapsed since the effective date of the Ordinance. Upon such termination, the applicable impact fee rates for all new development, including single family dwelling units, shall revert to Schedule 2 as adopted in Ordinance No. 2006-49.

**SECTION 4. Timely Construction & Code Compliance Required.** The reduction of any impact fee under this Ordinance is conditioned upon the timely construction of affected single family dwelling units, and the compliance of the building permit with all applicable zoning, building and land development code regulations. All building permits that receive reduced impact fees as provided for by this Ordinance shall expire six months after issuance and shall not be extended thereafter. Furthermore, each single family dwelling unit receiving an impact fee discount under this Ordinance shall qualify for a plumbing rough inspection within 90 days of building permit issuance. Failure to comply with either one of these timeline conditions shall require the payment of the difference between the impact fees collected under Section 2 of Ord. No. 2006-49, either at the time of final inspection of the dwelling unit or at the time a new building permit is issued, whichever first occurs.

**SECTION 5. Periodic Reports to be Produced.** In order to evaluate the effectiveness of this Ordinance in achieving its stated goals, the staff shall produce and Council shall consider periodic reports that monitor single family construction trends in the City of Midlothian and neighboring cities. Such data should be produced monthly by staff for review by Council as soon as practically possible, and should compare current monthly single family housing starts to historical data; and, should calculate Midlothian's capture rates of the area housing market, for both current and historical time periods.

**SECTION 2. Cumulative Effect.** This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Midlothian, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any in such other ordinance or ordinances are hereby superseded.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of any other section, sentence, clause or phrase of this ordinance the remaining portions of this ordinance.

**SECTION 4. Effective Date.** This ordinance shall become effective from and after the date of passage, and it is accordingly so ordained.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS, ON THIS THE 26<sup>TH</sup> DAY OF OCTOBER, 2010.**

**APPROVED:**

\_\_\_\_\_  
Boyce L. Whatley, Mayor

**ATTEST:**

\_\_\_\_\_  
Lou Jameson, City Secretary

**APPROVED AS TO FORM:**

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Don Stout, City Attorney