

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

Tuesday, April 26, 2011

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

2011-149 Announcements/Presentations

- a. Community affairs calendar
- b. Receive quarterly investment report from Linda Patterson of Patterson & Assoc.
- c. Receive United Way presentation
- d. 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.

2011-150 Consider and act upon minutes from City Council meetings of April 5 and 12, 2011

2011-151 Consider and act upon a resolution authorizing the 3rd Annual Victims of Fire 5K Fun Run/Walk hosted by the Midlothian Firefighter's Association scheduled for Saturday, May 7, 2011, in accordance with a Special Event Permit as established by the City of Midlothian Zoning Ordinance 89-13 as amended, Section 4.4 (Case No. RES14-2010-41)

PUBLIC HEARINGS

2011-152 Conduct a public hearing and act upon an ordinance regarding amendments to the City of Midlothian Comprehensive Plan, Ordinance 2007-15, as amended, specifically to amend by adding and revising certain road segments on the Thoroughfare Plan Map, including but not limited to: (1) the reclassification of FM 1387 to a major arterial; (2) the reclassification of Ashford Lane to a major collector; (3) the extension of a unnamed major collector street; (4) the realignment and reclassification of the Tower Road to a major collector; (5) the realignment and reclassification of Brookhollow Drive to a major collector/minor arterial; and (6) the realignment of FM 875; or any other revisions or deletions; providing a severability clause; and providing an effective date (Case No. CP01-2010-23)

2011-153 Conduct a public hearing to consider and act upon an ordinance amending Ordinance No. 2010-14, the MidTowne Planned Development Ordinance (PD-41), to allow independent senior living uses located at the intersection of George Hopper Road and the southern extension of Abigail Way. (Case No. Z04-2010-32)

REGULAR AGENDA

2011-154 Citizens to be heard

- 2011-155 Consider and act upon authorizing the Chief Building Official to waive permit fees for the repair and replacement of damaged fencing and electrical service lines as a result of the recent storm on April 11, 2011. Waiver shall expire on October 11, 2011, six months from date of storm
- 2011-156 Receive a staff presentation regarding the status of the draft CEDM Economic Development Plan and update to Section 10, Comprehensive Plan, Economic Development Section; the Strategic Marketing Plan and the Catalyst Retail Strategies Study; direct staff as necessary

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. 3:10-cv-01521-K, Paul Nichols v. City of Midlothian
5. Section 551.087 Deliberation regarding economic development negotiations
6. Section 551.071 Legal: Consultation with attorney regarding Supreme Court of Texas Cause No. 10-0150, ECOM Real Estate Management, Inc. v. City of Midlothian, Texas.
7. Section 551.071 Legal: Consultation with attorney based on an ethical duty to advise regarding Cause No. 66,519; Holnam Texas Limited Partnership vs. Ellis Central Appraisal District, et al
8. Section 551.071 Legal: Consultation with attorney regarding Cause No. 03-11-00007-CV, Wax Mid, Inc. v. TCEQ, et al
9. Section 551.072 Real Estate: Deliberation regarding condemnation of real property for U.S. Highway 67 grade separation project
10. Section 551.071 Legal: Consultation with attorney regarding Cause No. 74,681; City of Midlothian v. Corgan Associates, et al

REGULAR AGENDA

- 2011-157 Action resulting from Executive Session, Item #1: Real Estate/Roadway and Parks
- 2011-158 Action resulting from Executive Session, Item #2: Randall Denton, et al
- 2011-159 Action resulting from Executive Session, Item #3: Texas Central Business Lines
- 2011-160 Action resulting from Executive Session, Item #4: Paul Nichols
- 2011-161 Action resulting from Executive Session, Item #5: Economic Development
- 2011-162 Action resulting from Executive Session, Item #6: ECOM
- 2011-163 Action resulting from Executive Session, Item #7: Holnam Texas

- 2011-164 Action resulting from Executive Session, Item #8: Wax Mid, Inc.
2011-165 Action resulting from Executive Session, Item #9: U.S. Highway 67
2011-166 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 22nd day of April, 2011 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 2011-150

AGENDA CAPTION:

Consider and act upon minutes from City Council meetings of April 5 and 12, 2011

ITEM SUMMARY/BACKGROUND:

Minutes from the April 5th and 12th Council meetings are submitted for approval or correction

SPECIAL CONSIDERATION:

N/A

FINANCIAL IMPACT/FUNDING SOURCE:

N/A

ATTACHMENTS:

1. Minutes from Joint Council / MISD meeting of April 5, 2011
2. Minutes from Regular Council meeting of April 12, 2011

ALTERNATIVES:

Approve or correct

RECOMMENDATION:

Approve as submitted

SUBMITTED AND TO BE PRESENTED BY:

Lou Jameson, City Secretary, for the April 26, 2011 City Council Meeting



City Secretary

REVIEWED BY:



Tammy Varner, Deputy City Secretary

APPROVED BY:



Don Hastings, City Manager

**MINUTES
JOINT MEETING
OF THE MIDLOTHIAN CITY COUNCIL AND THE
MIDLOTHIAN INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES
APRIL 5, 2011**

The City Council of the City of Midlothian and the MISD Board of Trustees convened in a Joint Meeting at the MISD Administration Building, 100 Walter Stephenson, 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:

CITY COUNCIL

Boyce Whatley, Mayor

Jamie Wickliffe Bill Houston

Jason Kyle Joe Frizzell

Steve Massey

Absent: Hank Miller – death in family

Staff: Don Hastings, Carl Smith, John Garfield, Mike Adams, Chris Dick, Adam Mergener, David Schrod, Ryan Spencer, Lou Jameson, Harold Cates, Jim Berman

MISD BOARD OF TRUSTEES

Phil Seay, President

Wayne Shuffield Duke Burge

Cindy Williams Jim Mentzel

Tom Moore

Absent: Jay Roberts

Administration: Dr. Jerome Stewart, Dr. Edd Bigbee, David Boswell, Robin Bullock, Judy Walling, Jana Hathorne, Rhonda Welch, Theda McGrew

REGULAR AGENDA – 6:00 PM

2011-117 CALL TO ORDER BY EACH ENTITY

Mayor Whatley and President Seay each called their respective entities order with notice of the meeting duly posted and a quorum of each board in attendance.

2011-118 DISCUSS POTENTIAL FUTURE SCHOOL SITES: PLANNING AND INFRASTRUCTURE CONSIDERATIONS: DIRECT STAFF AS NECESSARY

Don Hastings thanked MISD for allowing the City to participate in evaluating future school sites related to roads, water, sewer, drainage, and demographics surrounding future sites.

2011-119 DISCUSS HIGH SCHOOL #2: ISSUES RELATED TO SITE PLANNING, INFRASTRUCTURE AND FINANCING: DIRECT STAFF AS NECESSARY

Dr. Stewart expressed appreciation for the City's cooperation in working toward an equitable solution for the unfunded state roadway situation regarding FM 1387.

Don Hastings stated that results of grant applications to assist in funding FM 1387 roadwork would not be known until several months after the bond election.

2011-120 DISCUSS 2011 MISD BOND ELECTION; DIRECT STAFF AS NECESSARY

Dr. Stewart provided a presentation detailing state funding cuts, demographics demonstrating the need for a second high school, and the ability to fund the project through increased student enrollment.

2011-121 DISCUSS CITY/MISD MUTUAL ASSISTANCE AND JOINT PROJECTS; DIRECT STAFF AS NECESSARY

The two entities discussed the desire to coordinate budget timing in order to address tennis court needs at the joint Sports Park. Costs were estimated at \$61,000 to perform resurfacing, replace nets and windscreens, and add logos and court numbers. Due to cost increases and budget constraints, it was stated that a minimum standard might be more achievable than the ideal standard.

2011-122 DISCUSS SCHOOL SECURITY AND EMERGENCY PREPAREDNESS; DIRECT STAFF AS NECESSARY

Lt. Garland Wolfe provided a Safety and Security Overview Report detailing current emergency operations and coordination with MISD in all areas including event preparation, athletic events, MHS as a POD site for Ellis County Emergency Management, residency and truancy checks as well as continued participation in the SRO agreement.

2011-123 DISCUSS DEVELOPMENT TRENDS AND FORECASTS; DIRECT STAFF AS NECESSARY

Ryan Spencer detailed current development trends and forecasts, housing demographics and recent census results; Midlothian experienced 141% in population growth since 2000.

2011-124 DISCUSS MISD FY 2011-12 BUDGET ISSUES; DIRECT STAFF AS NECESSARY

Both Dr. Stewart and Mr. Hastings expressed concern regarding reductions in the tax base, sales tax revenue, and franchise tax revenue.

2011-125 MIDLOTHIAN ISD BOND AND THE BUDGET; DIRECT STAFF AS NECESSARY

Dr. Stewart shared budget and bond information and explained the process to fund new buildings based on predicted and anticipated increases in student enrollment.

2011-126 PRESENT CITY OF MIDLOTHIAN INFRASTRUCTURE UPDATES; DIRECT STAFF AS NECESSARY

Mike Adams briefed the group on FM 663 bridge expansion plans with anticipated completion in late 2012.

2011-127 ADJOURN

With there being no further business to discuss, each entity was adjourned at 8:00 p.m.

ATTEST:

Boyce L. Whatley, Mayor

Lou Jameson, City Secretary

**MINUTES
REGULAR COUNCIL MEETING
APRIL 12, 2011**

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 the full Council present. Mayor pro tem Frizzell gave the invocation and led in the pledges.

2011-128 ANNOUNCEMENTS/PRESENTATIONS

a. Community affairs calendar

Mayor Whatley reported on his annual visit to discuss local government with third graders at Longbranch Elementary; downed tree limbs and brush from recent storms are being accepted at Water Tower #2; Spring Fling – April 30; Early Voting begins May 2; State of the City address available on-line; Dr. Stewart to address Chamber luncheon on April 13 regarding MISD bond election; Annual Easter Egg Hunt – April 16; Eat and Run and Vote event – May 14.

b. Proclaiming recognizing Public Safety Telecommunicators Week

Captain Spann accepted the Proclamation on behalf of Midlothian’s dispatchers.

c. Recognition of Water Treatment Plant Staff

Staff members Ray Cason, Sandra Binkley and Cynthia Day were recognized for earning second place in Top Ops competition and first runner-up in Best Tasting Water competition in Fort Worth.

d. Administrative announcements related to personnel

Fire Department Oath of Office of Lieutenant administered to Jeff Chamberlain.

Municipal Court Administrator Renee Moses introduced a newly developed citation brochure designed to improve customer service.

Street and Utility crews were recognized for their efforts to ensure safety during recent storms.

Jim Berman reported on the hugely successful, first annual, Kids Fishing Derby and introduced winners in three divisions.

CONSENT AGENDA

2011-129 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETING OF MARCH 22, 2011

2011-131 CONSIDER AND ACT UPON A REQUEST TO AUTHORIZE THE CITY MANAGER TO EXECUTE A GENERAL WARRANTY DEED ON BEHALF OF THE CITY OF MIDLOTHIAN DEEDING 21.89 ACRES OF LAND TO THE TRINITY RIVER AUTHORITY OF TEXAS, SAID LAND IS MORE COMMONLY REFERRED TO AS THE “OLD” WASTEWATER TREATMENT PLANT PROPERTY

Item 2011-130 was moved to the Regular Agenda at the request of the City Manager. Councilmember Kyle moved to approve the amended Consent Agenda as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

REGULAR AGENDA

2011-130 CONSIDER AND ACT UPON APPROVAL OF THE SUMMER BALLOON CLASSIC AND AIRFEST REQUEST TO EXPEND \$5,000 OF MUNICIPAL HOTEL/MOTEL TAX MONIES FOR DESIGN AND MARKETING OF PROMOTIONAL MATERIAL EXPENDITURES FOR THE JULY 22, 23 AND 24, 2011 EVENT TO BE HELD AT MIDWAY AIRPORT

Mr. Garfield provided history related to the event.

Debbie Standifer, 264 Johnson Lane, Ovilla, described extensive publicity and promotion of the event that should attract thousands of visitors to the area.

Councilmember Miller moved to approve Item 2011-130 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (7-0).

PUBLIC HEARINGS

2011-132 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN APPLICATION TO AMEND ORDINANCES 2005-38 AND 2010-19, THE PLANNED DEVELOPMENT ORDINANCES FOR MIDLOTHIAN MEADOWS PHASE VI (PD-14A-1) BY REDUCING SIDE YARD SETBACKS FROM 6 FEET TO 5 FEET. PROPERTY IS EAST OF WALTER STEPHENSON AND NORTH OF US HWY 287, IN THE CITY OF MIDLOTHIAN, TEXAS. (CASE NO. Z03-2010-31)

Mayor Whatley opened the Public Hearing and Mr. Garfield presented the request unanimously recommended for approval by P&Z on March 24. Mr. Garfield stated that the proposal met all applicable City regulations and that staff supported approval.

Mayor Whatley closed the Public Hearing. Councilmember Houston moved to approve Item 2011-132 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (7-0).

REGULAR AGENDA

2011-133 CITIZENS TO BE HEARD

Gina Littlejohn, owner of Gator's Wings and Catfish, 661 E. Main Street, requested City assistance in directing motorists off the bypass and onto businesses on Main Street. Mayor Whatley directed the City Manager to contact Ms. Littlejohn.

2011-134 CONSIDER AND ACT UPON AN ORDINANCE ESTABLISHING A MUNICIPAL COURT JUVENILE CASE MANAGER FUND; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF A MUNICIPAL COURT JUVENILE CASE MANAGER FEE; PROVIDING FOR A SEVERABILITY AND PENALTY CLAUSE; AND SETTING AN EFFECTIVE DATE

Court Administrator Renee Moses described the process to establish the Fund that will eventually support a position to oversee juvenile cases.

Councilmember Houston moved to approve Item 2011-134. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (7-0).

2011-135 CONSIDER AND ACT UPON AN ORDINANCE AMENDING THE CITY OF MIDLOTHIAN, TEXAS, CODE OF ORDINANCES, ARTICLE 9.02, DIVISION 2, BY AMENDING THE REGULATIONS GOVERNING THE POLICE RESERVES BY IMPLEMENTING CITY COUNCIL APPROVAL OF RESERVE OFFICERS' APPOINTMENT TO DISCHARGE OFFICIAL DUTIES AS A PEACE OFFICER

Chief Smith advised that the issue of mandated Council approval was inadvertently left out of the original Ordinance.

Mayor pro tem Frizzell moved to approve Item 2011-135 as presented. Motion was seconded by Councilmember Wickliffe and carried unanimously (7-0).

2011-136 CONSIDER AND ACT UPON APPROVAL OF ALL CURRENTLY APPOINTED RESERVE OFFICERS FOR THE CITY OF MIDLOTHIAN

Councilmember Miller moved to approve Item 2011-136 as presented. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (7-0).

2011-137 CONSIDER AND ACT UPON AN ENGINEERING SERVICES AGREEMENT FOR THE FM 663 AT US HIGHWAY 287 BRIDGE RECONSTRUCTION AND WIDENING PROJECT WITH SCHRICKEL, ROLLINS AND ASSOCIATES, INC. IN AN AMOUNT NOT TO EXCEED \$366,160

Mike Adams recommended approval of the negotiated contract with SRA.

Councilmember Kyle moved to approve Item 2011-137 as presented. Motion was seconded by Councilmember Houston and carried unanimously (7-0).

2011-138 CONSIDER AND ACT UPON ESTABLISHING AN ORDINANCE TO ADOPT LANDSCAPE AND LAWN IRRIGATION CONSERVATION MEASURES FOR PROPERTIES LOCATED WITHIN THE CORPORATE BOUNDARY OF THE CITY OF MIDLOTHIAN; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR A SEVERABILITY 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), AND EACH DAY THAT SUCH VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE AND SHALL BE PUNISHABLE ACCORDINGLY; AND PROVIDING FOR AN EFFECTIVE DATE

Mike Adams presented the plan to reduce per capita water consumption over five and ten year periods.

Councilmember Houston moved to approve Item 2011-138 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (7-0).

With no updates to received, Executive Session was not conducted.

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. 3:10-CV-01521-K, PAUL NICHOLS V. CITY OF MIDLOTHIAN**

5. SECTION DELIBERATION REGARDING ECONOMIC DEVELOPMENT
551.087 NEGOTIATIONS
6. SECTION LEGAL: CONSULTATION WITH ATTORNEY REGARDING SUPREME
551.071 COURT OF TEXAS CAUSE NO. 10-0150, ECOM REAL ESTATE
MANAGEMENT, INC. V. CITY OF MIDLOTHIAN, TEXAS.
7. SECTION LEGAL: CONSULTATION WITH ATTORNEY BASED ON AN
551.071 ETHICAL DUTY TO ADVISE REGARDING CAUSE NO. 66,519;
HOLNAM TEXAS LIMITED PARTNERSHIP VS. ELLIS CENTRAL
APPRAISAL DISTRICT, ET AL
8. SECTION LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE
551.071 NO. 03-11-00007-CV, WAX MID, INC. V. TCEQ, ET AL
9. SECTION REAL ESTATE: DELIBERATION REGARDING CONDEMNATION OF
551.072 REAL PROPERTY FOR U.S. HIGHWAY 67 GRADE SEPARATION
PROJECT

REGULAR AGENDA

With no Executive Session conducted, no action was taken on any of the following Items

- 2011-139 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: REAL
ESTATE/ROADWAY AND PARKS
- 2011-140 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: RANDALL
DENTON, ET AL
- 2011-141 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: TEXAS
CENTRAL BUSINESS LINES
- 2011-142 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: PAUL
NICHOLS
- 2011-143 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: ECONOMIC
DEVELOPMENT
- 2011-144 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #6: ECOM
- 2011-145 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #7: HOLNAM
TEXAS
- 2011-146 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #8: WAX MID,
INC.
- 2011-147 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #9: U.S.
HIGHWAY 67
- 2011-148 ADJOURN

With there being no further business to discuss, Mayor Whatley adjourned the meeting at 7:10 p.m.

ATTEST:

Boyce L. Whatley, Mayor

Lou Jameson, City Secretary