

## CITY COUNCIL REGULAR MEETING

**MARCH 18, 2014**

The City Council of the City of McKinney, Texas met in regular session in the Council Chambers of the Municipal Building on March 18, 2014 at 6:00 p.m.

Council Present: Mayor Pro Tem Travis Ussery, Council members: Geralyn Keever, Don Day, Ray Ricchi, Roger Harris, and Randy P. Pogue. Council member Ricchi arrived at 6:10 p.m. Absent: Mayor Brian Loughmiller.

Staff Present: Deputy City Manager Jose Madrigal; City Attorney Mark Houser; City Secretary Sandy Hart; Chief Financial Officer Rodney Rhoades; Executive Director of Development Services Barry Shelton; Assistant Director of Development Services Rick Leisner; Director of Planning Michael Quint; Director of Engineering Mark Hines; McKinney Economic Development Corporation - Jim Wehmeier, John Valencia, and Abby Liu; Interim Parks, Recreation, and Open Space Director Ryan Mullins; Fire Chief Danny Kistner; Assistant to the City Manager Darrek Ferrell; Interim Director of Public Works Paul Sparkman; Community Engagement Director Ty Lake; McKinney Community Development Corporation President Cindy Schneible; Officer Bradley Williams; Traffic Engineer II Robyn Root; and Communications and Media Specialist Denise Lessard.

There were 36 guests present.

Mayor Pro Tem Ussery called the meeting to order at 6:03 p.m. after determining a quorum was present. Invocation was given by Reverend Doug Fox, First United Methodist Church. A boy scout from the audience led the Pledge of Allegiance.

**14-266** Blue Star Flag Presentation to Kynmbahl Wesson in Honor of her husband, James Wesson, U.S. Navy. Council member Harris presented the Blue Star Flag to Kynmbahl Wesson in honor of her husband, James Wesson.

Mayor Pro Tem Ussery called for Citizen Comments.

Mr. Gene Grimes, 911 Lindsey Street, McKinney spoke about a neighborhood store/market with a pharmacy and about the demographics of the Highway 5 corridor.

Council unanimously approved the motion by Council member Pogue, seconded by Council member Harris, to approve the following consent items:

- 14-268** Minutes of the City Council Work Session of March 3, 2014
- 14-190** Minutes of the Animal Service Facilities Advisory Committee Meeting of January 15, 2014 at 12:15 p.m.
- 14-189** Minutes of the Board of Adjustment Regular Meeting of January 22, 2014
- 14-241** Minutes of the Building and Standards Board Meeting of December 10, 2012
- 14-242** Minutes of the Building and Standards Board Meeting of November 11, 2013
- 14-172** Minutes of the McKinney Airport Development Corporation Meeting of January 15, 2014
- 14-202** Minutes of the McKinney Community Development Corporation Board Meeting of January 23, 2014
- 14-204** Minutes of the McKinney Community Development Corporation Buy Local Subcommittee Meeting of January 27, 2014
- 14-205** Minutes of the McKinney Community Development Corporation Promotional & Community Events Subcommittee Meeting of February 19, 2014
- 14-203** Minutes of the McKinney Community Development Corporation Mission, Vision, & Guiding Principles Subcommittee Meeting of January 22, 2014
- 14-206** Minutes of the McKinney Community Development Corporation Buy Local Subcommittee Meeting of February 20, 2014
- 14-193** Minutes of the McKinney Convention and Visitors Bureau Finance Committee of January 23, 2014
- 14-192** Minutes of the McKinney Convention and Visitors Bureau Board Meeting of January 28, 2014
- 14-194** Minutes of the McKinney Convention and Visitors Bureau Marketing Committee Meeting of February 17, 2014.
- 14-195** Minutes of the McKinney Convention and Visitors Bureau Finance Committee Meeting of February 19, 2014
- 14-196** Minutes of the McKinney Convention and Visitors Bureau Development

Committee Meeting of February 19, 2014

- 14-162** Minutes of the McKinney Economic Development Corporation Board Meeting of January 21, 2014
- 14-270** Minutes of the McKinney Housing Authority Board Meeting of January 21, 2014
- 14-271** Minutes of the McKinney Housing Authority Board Meeting of February 18, 2014
- 14-223** Minutes of the Planning and Zoning Commission Regular Meeting of February 11, 2014
- 14-274** Consider/Discuss/Act on an Ordinance Amending the 2013-2014 Annual Budget to Repair the Oak Hollow Dam from the Surface Water Drainage Fund. Caption reads as follows:

ORDINANCE NO. 2014-03-019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS AUTHORIZING CERTAIN BUDGET AMENDMENT PERTAINING TO THE FISCAL YEAR 2013-2014 BUDGET; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

- 14-272** Consider/Discuss/Act on a Resolution Authorizing the Deputy City Manager to Execute a Landscape Maintenance Agreement for US 75 at Wilmeth Road. Caption reads as follows:

RESOLUTION NO. 2014-03-021 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE DEPUTY CITY MANAGER TO EXECUTE A LANDSCAPE MAINTENANCE AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE INSTALLATION AND MAINTENANCE OF LANDSCAPE AND IRRIGATION SYSTEM AT THE US 75 - WILMETH ROAD INTERCHANGE

END OF CONSENT

- 14-267** Mayor Pro Tem Ussery called for the Minutes of the City Council Special Meeting of February 28, 2014. Council member Pogue asked about the motion out of Executive Session. City Attorney Mark Houser stated that

was the motion that was approved. Council unanimously approved the motion by Council member Kever, seconded by Council member Pogue, to approve the Minutes of the City Council Special Meeting of February 28, 2014.

**14-269** Mayor Pro Tem Ussery called for the Minutes of the City Council Regular Meeting of March 4, 2014. Council member Pogue asked that the minutes be corrected referencing Gary Graham's name. Council unanimously approved the motion by Council member Harris, seconded by Council member Pogue, to approve the Minutes of the City Council Regular Meeting of March 4, 2014 with the correct spelling of Gary Graham's name.

Council member Pogue stepped down from the dais on the following agenda item.

**14-011Z3** Mayor Pro Tem Ussery called for a Public Hearing to Consider/Discuss/Act on the Request by McKinney Christian Academy, for Approval of a Request to Rezone Fewer than 60 Acres from "PD" - Planned Development District to "PD" - Planned Development District, Generally to Modify the Development Standards, Located on the South Side of Bois D'Arc Road and Approximately 800 Feet West of Jordan Road, and Accompanying Ordinance. Planning Director Michael Quint stated that the applicant is requesting to rezone the subject property, to allow the addition of two portable buildings to be permitted on the subject property for an indefinite period of time while not meeting the architectural standards. City Staff went out to the site to observe traffic patterns or circulation and there were no significant increases in queuing or stacking in the right-of-way. City Staff is not recommending any changes to the current circulation pattern on the site but will continue to monitor the area. Mr. Quint stated that adding a sunset clause to the approval with a limit of how long the buildings can remain may be become difficult from an enforcement stand point. Applicant, Mr. Bob

Lovelady, McKinney Christian Academy, 3601 Bois D'Arc Rd., McKinney, TX, stated that McKinney Christian Academy (MCA) stated as they build and continue to make big investments in the school, these two modular buildings will help as they get to the next phase of building out the strategic plan of the entire campus. These buildings provide MCA the ability to continue to grow and raise funds to build the new buildings. Mayor Pro Tem Ussery called for public comment. The following individuals spoke against the rezoning request:

Mr. Jerry LePlank, 3602 Bois D'Arc Drive, McKinney

Mr. Marty Webb, 904 Canyon Valley Drive, McKinney

Ms. Juanita Horne, 3400 Craig Drive, McKinney

Council approved the motion by Council member Keever, seconded by Council member Harris, to close the public hearing, with a vote of 5-0-1, Council member Pogue abstaining. Council member Ricchi requested that the City look into putting a school zone in the area to help alleviate some of the problems. Council member Day suggested reducing the speed limit in the area. Council approved the motion by Council member Keever, seconded by Council member Harris, to approve an Ordinance rezoning fewer than 60 Acres from "PD" - Planned Development District to "PD" - Planned Development District, generally to modify the Development Standards, located on the south side of Bois D'Arc Road and approximately 800 feet west of Jordan Road, with the following special ordinance provisions: use and development of the subject property shall conform to "PD" - Planned Development District Ordinance No. 2011-01-002, and as amended, except as follows: a maximum of 13 portable buildings be allowed on the subject property generally in the locations shown on the attached site layout; gates shall generally be placed in the locations shown on the attached fence exhibit; eight (8) Knock Out Rose shrubs and eight (8) Holly shrubs (2 feet at time of planting, placed 3 feet on center) will be planted along the south

of the two proposed portable buildings; and two (2) Crepe Myrtle trees (spaced 10 feet apart, 5 feet tall, 2 inches in caliper at time of planting) and 8 Knock Out Rose shrubs (2 feet at time of planting, placed 3 feet on center) will be planted along the west side of the proposed storage building, shown on the attached site layout, with a vote of 5-0-1, Council member Pogue abstaining. Caption reads as follows:

ORDINANCE NO. 2014-03-020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING ORDINANCE NO. 2011-01-002 THE CITY OF MCKINNEY, TEXAS; SO THAT AN APPROXIMATELY 59.96 ACRE PROPERTY, LOCATED ON THE SOUTH SIDE OF BOIS D'ARC ROAD AND APPROXIMATELY 800 FEET WEST OF JORDAN ROAD, IS REZONED FROM "PD" – PLANNED DEVELOPMENT DISTRICT TO "PD" – PLANNED DEVELOPMENT DISTRICT, GENERALLY TO MODIFY THE DEVELOPMENT STANDARDS; PROVIDING FOR INJUNCTIVE RELIEF, PROVIDING FOR NO VESTED INTEREST; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

Council member Pogue returned to the dais.

- 14-125** Mayor Pro Tem Ussery called for a Public Hearing to Consider/Discuss on an Ordinance Granting Oncor Electric Delivery Company, LLC, a Non-Exclusive Franchise to Use Public Rights-of-Way for the Purpose of Constructing and Operating an Electric Distribution System. Chief Financial Officer Rodney Rhoades stated that this is the second public hearing required by the City Charter for the franchise agreement with Oncor. The Ordinance addresses the concerns Council member Kever brought up at the last meeting regarding vegetation management. This is a 10 year agreement unless either party provides 60 day notice to the other party. Council member Kever stated that Mr. Rhoades receives a 30 day notification prior to Oncor trimming trees. Ms. Kever requested that the City Council receive a notification when the City receives the notice. Mayor Pro Tem Ussery called for public comment and there was none. Council unanimously approved the motion by Council member Pogue, seconded by Council member Harris, to close the public hearing

and approve an Ordinance granting Oncor Electric Delivery Company, LLC, a Non-Exclusive Franchise to use public rights-of-way for the purpose of constructing and operating an Electric Distribution System.

Caption reads as follows:

ORDINANCE NO. 2014-03-021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF MCKINNEY FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION THEREFOR; PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND PROVIDING FOR SEVERABILITY

- 14-273** Mayor Pro Tem Ussery called for Consideration/Discussion/Action Upon Adoption of a Resolution Determining a Public Necessity to Acquire Certain Property for Public Use by Eminent Domain for Right-of-Way (in Fee Simple) for the Construction Associated with the Stacy Road Elevated Storage Tank Project Located Along Stacy Road Approximately 2400 Feet East of Alma Road; Authorizing the City Manager to Establish Procedures for Acquiring the Right of Way (in Fee Simple) on Said Property, and Take All Steps Necessary to Acquire the Needed Property Rights in Compliance with all Applicable Laws and Resolutions. Director of Engineering Mark Hines stated that this is a tract that has been identified in our capital program for an elevated storage tank. Staff has contacted the property owner and made an offer. They made a counter offer that was way off. The City's plan is to negotiate and hopefully, come to a mutual agreement. Staff is asking tonight to use eminent domain, if necessary. Council unanimously approved the motion by Council member Harris, seconded by Council member Pogue, that the City of McKinney, Texas, City Council approve this item as written and

adopt the Resolution described in this agenda item and authorize the use of the power of eminent domain to acquire for public use all necessary right-of-way (in fee simple) from the owners of the property depicted on and described by metes and bounds attached to said Resolution, said depiction and description being incorporated in their entirety into this motion for all purposes including the construction, access, and maintenance of the Stacy Road Elevated Storage Tank located along Stacy Road approximately 2400 feet east of Alma Road. Caption reads as follows:

RESOLUTION NO. 2014-03-022 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING A PUBLIC NECESSITY TO ACQUIRE CERTAIN PROPERTY FOR PUBLIC USE BY EMINENT DOMAIN FOR RIGHT-OF-WAY (IN FEE SIMPLE) FOR THE CONSTRUCTION, ACCESS AND MAINTENANCE ASSOCIATED WITH THE STACY ROAD ELEVATED STORAGE TANK PROJECT, LOCATED ALONG STACY ROAD APPROXIMATELY 2400 FEET EAST OF ALMA ROAD; APPOINTING AN APPRAISER AND NEGOTIATOR AS NECESSARY; AUTHORIZING THE DEPUTY CITY MANAGER TO ESTABLISH PROCEDURES FOR ACQUIRING THE RIGHT-OF-WAY (IN FEE SIMPLE) , AND TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE NEEDED PROPERTY RIGHTS

Mayor Pro Tem Ussery called for Citizen Comments and there were none.

Mayor Pro Tem Ussery called for Council and Manager Comments

Council member Day did not have any comments.

Council member Kever did not have any comments.

Council member Ricchi stated that he had a speaking engagement last week where they discussed flag poles that were previously erected in the grassy area at the McKinney Performing Arts Center and are now sitting in a City surplus yard. Mr. Ricchi stated he would like to see if there is an opportunity to use flag poles again at that location.

Council member Pogue expressed his heartfelt thanks to the Wesson family and all our armed services. Mr. Pogue thanked staff for all their work during this healing time.



Council member Harris echoed Council member Pogue's comments and stated that what is being done here by Staff is noticed and appreciated. Mr. Harris acknowledged Mr. Madrigal and Mr. Daake who have stepped up their approach to business.

Mayor Pro Tem Ussery thanked staff for what they do day in and day out.

Deputy City Manager Madrigal thanked Staff for their hard work and their business-like approach during this transition. Mr. Madrigal gave a special thank you to Police Corporal Melissa Taylor who saved a citizens life using CPR at a fast food restaurant on her day off. Mr. Madrigal complimented the community who attended the McKinney Connects Town Hall meeting and the Stonebridge Homeowners Association Annual meeting.

Mayor Pro Tem Ussery recessed the meeting into executive session at 7:45 p.m. per Texas Government Code Section 551.071 (2) Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed), Section 551.071 (1) (A). Litigation / Anticipated Litigation, Section 551.074 Personnel Matters, Section 551.072 Discuss Real Property, and Section 551.087 Discuss Economic Development Matter as listed on the posted agenda. Mayor Pro Tem Ussery recessed to the open session at 8:52 p.m.

Mayor Pro Tem Ussery called for Action on Executive Session Items.

Council unanimously approved the motion by Council member Kever, seconded by Council member Pogue, to approve a settlement in the Hank's Texas Grill litigation consistent with discussions in Closed Session.

Council unanimously approved the motion by Council member Harris, seconded by Council member Day, to adjourn. Mayor Pro Tem Ussery adjourned the meeting at 9:00 p.m.

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TRAVIS USSERY  
Mayor Pro Tem

ATTEST:

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SANDY HART, TRMC, MMC  
City Secretary