

**MINUTES
CITY OF GAINESVILLE
CITY COUNCIL MEETING
200 South Rusk
Gainesville, Texas 76240
November 18, 2008**

The City Council of the City of Gainesville, Texas met in regular session on November 18, 2008 at 6:30 p.m. with the following persons in attendance:

MEMBERS PRESENT: Mayor Glenn Loch
Council Members Charles Draper, Jim Goldsworthy, Carolyn Hendricks, Ray Nichols, Vince Rippey, Beverly Snuggs

STAFF PRESENT: Barry Sullivan, City Manager; Kay Lunnon, City Secretary; Bill Harris, City Attorney; Dan Parker, Finance Director; Steven Fleming, Police Chief; Steve Boone, Fire Chief; Chris Cypert, Municipal Court Judge; Ron Sellman, Public Services Director; John Noblitt, Planning Technician

OTHERS PRESENT: Rod Tyler, David Estes, Walter Fuller, Laura Horner, Joyce Hong, Megan Turbeville, Matthew Nilo, Samuel Rivas, Stephanie Medden, Stephen Monahan, J. Schmeidler, John Bulger, Michelle Christopher, Tamara Sieger, Chad Sieger, Jess Cason, Nancy Montalvo, Bryon Kelling, Steve Schmitz, Polly Boone, Kevin Phillips, Parker Yarbrough, Natalia Jones, Kit Chase.

CALL TO ORDER

Mayor Loch called the meeting to order at 6:30 p.m. with all members present.

INVOCATION & PLEDGE OF ALLEGIANCE

Pastor Larry Huffman, Grace Friendship Baptist Church, gave the invocation. Mayor Loch led the pledge to the flag.

CITIZEN COMMENTS

Rod Tyler spoke to Council about the drainage utility fee, stating that he considers the fee to be excessive. Tyler said the fee recently increased seventy-five percent and would deter growth of business in Gainesville.

CONSENT AGENDA

Council reviewed the Minutes of the Regular City Council Meeting of November 4, 2008 and approved them as written.

PARKS & RECREATION BOARD APPOINTMENT

Scott Richardson was appointed to the Parks and Recreation Board to the position vacated by David Cornett, who moved outside the city limits of Gainesville. The term expires March 2010.

Councilmember Draper moved to **approve all items on the Consent Agenda**, and was seconded by Councilmember Snuggs. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 11-18-2008 A – CONTRACT WITH HEWLETT PACKARD FOR BLADE TECHNOLOGY SERVERS FOR POLICE & FIRE DEPARTMENTS

A RESOLUTION AUTHORIZING A CONTRACT WITH HEWLETT PACKARD FOR THE PURCHASE OF BLADE TECHNOLOGY SERVERS FOR THE POLICE AND FIRE DEPARTMENTS.

A contract with Hewlett Packard was approved for purchase of blade servers and software to replace seven outdated computer system servers at the Public Safety Center, for Police, Fire, and Municipal Court. City Manager Barry Sullivan said the current system is outdated and has reached its capacity and repairs are costing the department. Police Chief Steven Fleming said the blade server system would be purchased on the state contract from Hewlett Packard through Resilient Intelligent Networks and is recommended to replace all seven servers in the current system. The blade system will provide mass storage and expansion capacity for increasing electronic data and digitized records in these departments. Total expenditure is ninety-eight thousand, one hundred eighty-nine dollars and seven-one cents (\$98,189.71) and is budgeted in the current fiscal year budget.

Councilmember Hendricks moved to **approve the resolution**, and was seconded by Councilmember Goldsworthy. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 11-18-2008 B – CONTRACT FOR CRIMES SOFTWARE & FIREHOUSE SOFTWARE RECORDS MANAGEMENT FOR POLICE & FIRE DEPARTMENTS

A RESOLUTION AUTHORIZING A CONTRACT WITH CRIMES SOFTWARE AND FIREHOUSE SOFTWARE FOR THE PURCHASE OF RECORDS MANAGEMENT SOFTWARE FOR THE POLICE AND FIRE DEPARTMENTS.

Contracts recommended by Police Chief Fleming and Fire Chief Boone for records management system software programs for the Police and Fire Departments were authorized. Chief Fleming stated the request is for purchases from multiple vendors and will affect multiple departments. FIREHOUSE is the national standard for fire department related records management, and also provides a mobile inspection module, which the Fire Department cannot currently perform on their existing program. The CRIMES software is specifically developed by Sam Houston State University (a sole source provider) for law enforcement agencies and demonstrates greater functionality over the current program Gainesville PD is using. Cost for the two programs includes purchase, initial implementation, pro-rated annual licensing fees, server preparation, and data migration. Total expenditures for the software packages, server preparation, and data migration, is one hundred thousand, two hundred fifteen dollars (\$100,215) and is budgeted in the current fiscal year budget. The City Manager praised this example of departments working together to save money. The technology benefits three departments on the same servers.

Councilmember Nichols moved to **approve the resolution**, and was seconded by Councilmember Rippy. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 11-18-2008 C – AGREEMENT WITH TXDOT FOR RIGHT OF WAY ON CALIFORNIA STREET AT PECAN CREEK FOR BRIDGE REPLACEMENT PROJECT

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH TXDOT FOR ACQUISITION OF RIGHT OF WAY ON HIGHWAY FM 51 (CALIFORNIA STREET) AT PECAN CREEK FOR APPROACHES IN THE BRIDGE REPLACEMENT PROJECT AND FOR ROADWAY MAINTENANCE OF BROADWAY STREET DURING CONSTRUCTION OF THE BRIDGE REPLACEMENT PROJECT.

An agreement was approved with TXDOT for acquisition of right of way on California Street at Pecan Creek for approaches in the replacement of the California Street bridge as part of the Pecan Creek Flood Reduction Project. The City will deed the right of way necessary for construction of the approaches for the bridge on California Street. During construction of the bridge, TXDOT will detour traffic onto Broadway Street and maintain and repair any damage to

Broadway Street as necessary because of the detour. There is no cost for the City's participation in the agreement. Sullivan advised Council that TXDOT had submitted a revised statement of scope of work to clarify the area of roadway TXDOT will maintain due to the detour of traffic onto Broadway Street during the construction of the bridge on California Street.

Councilmember Draper moved to **approve the resolution and agreement with the scope of work as clarified by TXDOT**, and was seconded by Councilmember Snuggs. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 11-18-2008 D – RELEASE OF EASEMENT & ACCEPT NEW EASEMENT FROM B-29 AT NATIONAL INDUSTRIAL CENTER

A RESOLUTION AUTHORIZING MAYOR TO EXECUTE AND DELIVER A RELEASE OF EASEMENT TO B-29 PROPERTIES, L.L.C. AND ACCEPTING A NEW UTILITY EASEMENT AT THE NATIONAL INDUSTRIAL CENTER.

During the development of the property, B-29 Properties needed to relocate an existing drainage utility easement to the West. Sullivan stated the project has been completed and this resolution is to officially approve release of the existing easement and replace it with a new utility easement to the west. B-29 will re-plat Lots 8 & 9 of the National Industrial Center and dedicate the new utility and drainage easement to the City.

Councilmember Snuggs moved to **approve the resolution**, and was seconded by Councilmember Draper. Motion carried by vote of 7 Ayes, 0 Nays.

PUBLIC HEARING ON REPEALING THE ZONING ORDINANCE IN ITS ENTIRETY AND ESTABLISHING AND ADOPTING APPENDIX A ZONING REGULATIONS IN THE CITY OF GAINESVILLE.

Mayor Loch opened the Public Hearing at 6:47 p.m. and called for public comment on the proposed new Zoning Ordinance.

Jess Cason requested consideration of zoning changes for three of his properties. The first property is four and one half lots on Rice Avenue at Anthony Street that he requested to be rezoned from single family one (SF1) to restricted commercial. The second property is a three acre tract on North Aspen and Highway 82, located between Alabama Street on the north, Alabama Street on the west, Gainesville Housing Authority on the east, and a church on the south, that he requested to be rezoned from single family three (SF3) to restricted commercial. The third request is to change the zoning on approximately thirty-four (34) acres located on the north end of Independence Street, extending north to Jodi Lane. He requested the southern five (5) acres of the 34 acre parcel in the southeast corner to be zoned from single family three (SF3) to commercial, and the balance of the 34 acre parcel to be zoned multi family one (MF1) under the new zoning ordinance.

David Estes, 633 South Denton Street, requested Council to consider that the Rice Avenue and Anthony Street area has been zoned single family (SF) for many years and that changes as requested by Mr. Cason could be interpreted as spot zoning. He would like Council to maintain the integrity of the single family one (SF 1) area in the Rice Avenue and Anthony Street area.

Rod Tyler stated the new zoning ordinance will determine growth of Gainesville and requested Council's consideration to zone Culberson Street as commercial. He said portions of Culberson are presently zone single family two (SF2). He said Culberson is a good connector street between downtown Gainesville and Highway 82 and would make an excellent business district. Tyler said he owns the Booker T. Washington facility and would like to develop it commercially.

With no other person coming forward to comment either for or against the ordinance, Councilmember Snuggs **moved to close the Public Hearing**, seconded by Councilmember Goldsworthy. Motion carried by vote of 7 Ayes, 0 Nays. The Public Hearing was closed at 6:59 p.m.

FIRST READING APPROVAL OF NEW ZONING ORDINANCE

FIRST READING OF AN ORDINANCE REPEALING IN ITS ENTIRETY THE ZONING ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS, AS PASSED AND APPROVED BY THE CITY COUNCIL FEBRUARY 2, 1971, TOGETHER WITH ALL AMENDMENTS THERETO AND ESTABLISHING APPENDIX A ZONING TO THE CITY OF GAINESVILLE'S MUNICIPAL CODE AND ADOPTING AS SAID APPENDIX AN ORDINANCE ESTABLISHING AND PROVIDING FOR ZONING REGULATIONS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR PENALTIES; AND PROVIDING A SAVINGS CLAUSE.

Sullivan introduced the new zoning ordinance, stating it would replace the existing ordinance that was adopted in 1971 and amended many times since then, making it difficult for staff to interpret. Also, there have been many changes in state law. Sullivan said the goals for the new zoning ordinance are 1) to update the code in a manner consistent and compliant with State Law and with the City's Comprehensive Land Use Plan; 2) to make the zoning code more accessible to the general public by making it easier to understand; 3) to consolidate zoning districts and remove districts that are no longer in use; 4) to encourage development by removing overly regulatory elements while securing public health, safety, and property values. To ensure the city remains aesthetically pleasing and safe, the new ordinance increases the requirements for exterior coverage and landscaping throughout the city. The new ordinance will be more business friendly by reducing the number of issues to be brought before the Planning and Zoning Commission because the ordinance can be enforced by city staff.

Goldsworthy raised questions regarding Specific Use Permits (SUPs), in particular, existing mobile home specific use permits that are not renewable under the new zoning ordinance. He said it is not right that homeowners who have invested money, some having just recently obtained their permit, to not be able to renew their permit. The City Manager responded that in most cases SUPs are intended for situations that cannot be zoned. He said a specific use permit should be applied to a zoning use, not to a zoning district. Facilities such as Day Cares and Bed and Breakfasts are permitted under SUPs and are renewable under the new ordinance. The new ordinance includes zoning that allows for mobile homes, but existing permits located outside the zoning district would not be renewable. Planning Technician John Noblitt added that individual permits could be addressed by the Council before the new zoning map is adopted. He said staff is very cautious about issuing SUPs with regard to spot zoning, especially those permitting mobile homes. Sullivan agreed that structures can be grandfathered in the new ordinance and would continue to exist until damaged fifty percent or more and then would have to be removed. There are mobile homes in areas throughout the city that were in place prior to SUP legislation and exist currently as non-conforming uses, but not under an SUP. Those structures will remain as existing non-conforming uses and will not have to be removed unless they incur fifty percent substantial damage and then will have to conform to zoning regulations. Snuggs pointed out that under the present zoning code, the homeowner applying for a SUP is aware that it is limited to the term of the permit and they must apply for a new permit at the end of the term.

Mayor Loch asked staff to review the section of the new ordinance regarding repairs and maintenance to determine if the language should be more specific about the cost of restoring structures to safe condition. He also requested staff to research state law regarding the required number of votes by the City Council to override a denial recommendation by the Planning and Zoning Commission. Sullivan said complete the review and bring the information back to Council.

No changes were made to the ordinance on this reading by Council. Councilmember Draper **moved to approve first reading of the ordinance, requesting response by City Staff at second reading of the ordinance regarding the zoning requests by Cason, Estes, and Tyler and the research as requested by Council.** The motion was seconded by Councilmember Goldsworthy and carried by vote of 7Ayes, 0 Nays.

PUBLIC HEARING ON REZONING OF 15.912 ACRES IN THE E. YEAMAN SURVEY, ABSTRACT 1173, COOKE COUNTY, TEXAS, FROM TWO FAMILY (2F) TO MULTIPLE-FAMILY 2 (MF-2).

Mayor Loch opened the Public Hearing at 7:21 p.m. and called for public comment on the proposed rezoning.

No person came forward to speak either for or against the proposed ordinance. With no further discussion, Councilmember Snuggs **moved to close the Public Hearing**, seconded by Councilmember Draper. Motion carried by vote of 7 Ayes, 0 Nays. The Public Hearing was closed at 7:23 p.m.

FIRST READING APPROVAL OF ORDINANCE TO REZONE 15.912 ACRES IN E. YEAMAN SURVEY FROM TWO FAMILY (2F) TO MULTIPLE FAMILY (MF2)

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE 25-2-71; 101A-8-76;154-12-79;THE ZONING ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS AUTHORIZING THE CITY OF GAINESVILLE, TEXAS, TO REZONE FROM TWO FAMILY (2F) TO MULTIPLE-FAMILY 2 (MF-2), 15.912 ACRES IN THE E. YEAMAN SURVEY, ABSTRACT 1173, COOKE COUNTY, TEXAS; PROVIDING FOR AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF GAINESVILLE; PROVIDING FOR STIPULATIONS; PROVIDING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; CONTAINING A SEVERABILITY CLAUSE AND MAKING AN OPEN MEETING FINDING.

The request is to rezone 15.912 acres off Blacks Hill Drive from two family (2F) to multiple family (MF2). Parker Yarbrough reported the property is currently under contract; the buyer intends to construct an 80 unit apartment complex; and no tax credits or abatements will be requested. City staff said water supply and pressure is sufficient to handle the new development, and traffic studies had been preformed earlier based on projected development of apartments in this area. The zoning district change is in compliance with the City Comprehensive Land Use Plan. Planning and Zoning Commission recommends approval of the rezoning.

Councilmember Goldsworthy **moved to approve first reading of the ordinance.** The motion was seconded by Councilmember Draper and carried by vote of 7 Ayes, 0 Nays.

PUBLIC HEARING ON REZONING OF 814 NORTH DIXON STREET, FROM SINGLE FAMILY THREE (SF3) TO HEAVY INDUSTRIAL (I-2).

Mayor Loch opened the Public Hearing at 7:33 p.m. and called for public comment on the proposed rezoning.

No person came forward to speak either for or against the proposed ordinance. With no further discussion, Councilmember Snuggs **moved to close the Public Hearing**, seconded by Councilmember Draper. Motion carried by vote of 7 Ayes, 0 Nays. The Public Hearing was closed at 7:34 p.m.

ORDINANCE NO. 1216-11-2008 - REZONE 814 NORTH DIXON STREET FROM SINGLE FAMILY THREE (SF3) TO HEAVY INDUSTRIAL (I-2)

FIRST READING OF AN ORDINANCE AMENDING ORDINANCE 25-2-71; 101A-8-76; 154-12-79; THE ZONING ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS AUTHORIZING THE CITY OF GAINESVILLE, TEXAS, TO REZONE FROM SINGLE FAMILY 3 (SF3) TO HEAVY INDUSTRIAL (I2), THE PROPERTY LOCATED AT 814

NORTH DIXON STREET; PROVIDING FOR AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF GAINESVILLE; PROVIDING FOR STIPULATIONS; PROVIDING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; CONTAINING A SEVERABILITY CLAUSE AND MAKING AN OPEN MEETING FINDING.

The rezoning of 814 North Dixon is requested by B-29 Properties, from single family three (SF3) to heavy industrial (I-2), to incorporate a newly acquired property into the Compress Industrial Park. The rezoning is in compliance with the Comprehensive Land Use Plan and was recommended for approval by Planning and Zoning Commission.

Councilmember Draper **moved to suspend the Charter requirement of readings on three separate occasions**, and was seconded by Councilmember Snuggs. The motion carried by vote of 7 Ayes, 0 Nays.

Councilmember Snuggs **moved to adopt the ordinance**. The motion was seconded by Councilmember Draper and carried by vote of 7 Ayes, 0 Nays.

SECOND READING DISAPPROVAL OF ORDINANCE FOR LONG TERM ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. (CAPP)

SECOND READING OF AN ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT ("PPA"); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2011 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN AND RETURN CAPP'S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE'S OR CITY OFFICER'S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT.

Sullivan summarized the agreement and the benefits and risks for City participation in a long-term contract for electric power with Cities Aggregation Power Project, Inc. (CAPP). The idea for the contract was good, he said, but would come with high risk. The City would be able to budget annually for power at a fixed cost, but would be required to pay two thirds of the contract up front, approximately \$3,000,000, and pledge future ad valorem taxes. Sullivan said the goal of the long term contract is for an overall cost of eight cents per kilowatt hour, however, in the past few months energy prices have gone down and the City is currently beating the proposed contract price with a fixed cost five-year contract that does not require payment upfront.

