

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LUFKIN, TEXAS HELD ON THE 16th, DAY OF APRIL, 2013.

On the 16th day of April, 2013, the City Council of the City of Lufkin, Texas convened in a Regular Meeting in the Council Chambers of City Hall with the following members, thereof to wit:

Bob Brown	Mayor
Don Langston	Mayor Pro-Tem
Victor Travis	Councilmember, Ward No. 1
Robert Shankle	Councilmember, Ward No. 2
Lynn Torres	Councilmember, Ward No. 3
Rufus Duncan	Councilmember, Ward No. 5
Sarah Murray	Councilmember, Ward No. 6
Paul L. Parker	City Manager
Keith Wright	Deputy City Manager
Bruce Green	City Attorney
Kara Atwood	City Secretary
Denise Myers	Human Resources
Scott Marcotte	Police Chief
Gerald Williamson	Assistant Police Chief
Ted Lovett	Fire Chief
Kathryn Edwards	Planning Department
Steve Poskey	Street Department Director
Steve Floyd	Public Works Director
Chuck Walker	Public Utilities Director
Dale Allred	Inspection Services Director
Aaron Ramsey	Animal Control Director

being present when the following business was transacted.

1. Mayor Bob Brown asked that a moment of silence be observed in honor of those affected by the bombings in Boston. The meeting was then opened with prayer by Deputy City Manager Keith Wright.
2. Mayor Bob Brown welcomed visitors present.

APPROVAL OF MINUTES

3. Minutes of the Regular Meeting of April 2nd, 2013 were approved on a motion by Councilmember Lynn Torres and seconded by Councilmember Sarah Murray. A unanimous affirmative vote was recorded to approve the minutes as presented.

OLD BUSINESS:

4. **PUBLIC HEARING AND SECOND READING OF AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LUFKIN, TEXAS, BY REMOVING THE SPECIAL USE PERMIT, ORDINANCE #4164 AND CHANGING THE ZONING DESIGNATION FROM "NEIGHBORHOOD RETAIL" TO "LOCAL BUSINESS" FOR A .724 ACRE PROPERTY DESCRIBED AS 3208 BLJ LLC ADDN., BLOCK 1, LOT 1 AND MORE COMMONLY KNOWN AS 514 WEST FRANK AVENUE – APPROVED.**

Mayor Bob Brown stated the next item on the agenda was to conduct a Public Hearing and consider on second reading an Ordinance amending the Zoning Ordinance of the City of Lufkin, Texas, by removing the Special Use Permit, Ordinance #4164 and changing the zoning designation from "Neighborhood Retail" to "Local Business" for a .724 acre property described as 3208 BLJ LLC ADDN., Block 1, Lot 1 and more commonly known as 514 West Frank Avenue.

City Manager Paul Parker stated this was the second reading of a request from the T.L.L. Temple Foundation for a zone change to "Local Business" at 514 West Frank Avenue for the proposed expansion of the Alcohol and Drug Abuse Council Facility. City Manager Parker stated that the current zoning restricted the size of the building to three thousand (3,000) square feet and this change would allow the construction of a four thousand six hundred (4,600) square foot building.

City Manager Parker concluded that the request had been approved on first reading and both Planning Staff and the Planning & Zoning Commission recommended approval.

Mayor Brown opened the Public Hearing at 5:03 p.m. and requested that anyone who wished to speak on the item to please step forward. There being no one who wished to speak, Mayor Brown closed the Public Hearing and asked for comments or questions from City Council.

Councilmember Victor Travis moved to approve an Ordinance amending the Zoning Ordinance of the City of Lufkin, Texas, by removing the Special Use Permit, Ordinance #4164 and changing the zoning designation from "Neighborhood Retail" to "Local Business" for a .724 acre property described as 3208 BLJ LLC ADDN., Block 1, Lot 1 and more commonly known as 514 West Frank Avenue. Councilmember Don Langston seconded the motion and a unanimous vote to approve was recorded.

5. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LUFKIN, TEXAS, BY GRANTING A SPECIAL USE PERMIT FOR A COMMUNICATION TOWER WITHIN A "LOCAL BUSINESS" ZONING DISTRICT FOR A 1600 SQUARE FOOT LEASE AREA ON PROPERTY DESCRIBED AS DUBOSE SUBD., BLOCK 1, LOT 1, AND MORE COMMONLY KNOWN AS 5500 SOUTH FIRST STREET – APPROVED.

Mayor Bob Brown stated the next item was to conduct a Public Hearing and consider on Second Reading an Ordinance amending the Zoning Ordinance of the City of Lufkin, Texas, by granting a Special Use Permit for a communication tower within a "Local Business" zoning district for a 1600 square foot lease area on property described as Dubose Subd., Block 1, Lot 1, and more commonly known as 5500 South First Street.

City Manager Paul Parker stated that the caption described the item and added that this Special Use Permit was for a forty (40') by forty foot (40') lease area for the placement of a seventy foot (70') monopole tower by Verizon Wireless.

Mayor Brown opened the Public Hearing at 5:04 p.m. and requested that anyone who wished to speak on the item to please step forward. There being no one who wished to speak, Mayor Brown closed the Public Hearing and asked for comments or questions from City Council.

Councilmember Victor Travis moved to approve the Second Reading of an Ordinance amending the Zoning Ordinance of the City of Lufkin, Texas, by granting a Special Use Permit for a communication tower within a "Local Business" zoning district for a 1600 square foot lease area on property described as Dubose Subd., Block 1, Lot 1, and more commonly known as 5500 South First Street. Councilmember Don Langston seconded the motion and a unanimous vote to approve was recorded.

6. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE REPEALING PENAL ORDINANCE 406 OF CODE OF ORDINANCES, RELATING TO SMOKING, CONTAINING FINDINGS, ADOPTING COMPREHENSIVE REGULATIONS OF SMOKING IN PUBLIC PLACES, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE – APPROVED.

Mayor Bob Brown stated the next item was to conduct a Public Hearing and consider on second reading an Ordinance repealing Penal Ordinance 406 of Code of Ordinances, relating to smoking, containing findings, adopting comprehensive regulations of smoking in public places, providing for severability, and providing for an effective date.

City Manager Paul Parker stated this was the second reading of the proposed smoking ordinance and that City Council had discussed the ordinance numerous times. City Manager Parker stated that there had been one revision to the ordinance; the deletion of Section 16.3.

Mayor Brown opened the Public Hearing at 5:06 p.m. and requested that anyone who wished to speak on the item to please step forward. There being no one further who wished to speak, Mayor Brown closed the Public Hearing and asked for comments or questions from City Council.

Councilmember Victor Travis moved to approve an Ordinance repealing Penal Ordinance 406 of Code of Ordinances, relating to smoking, containing findings, adopting comprehensive regulations of smoking in public places, providing for severability, and providing for an effective date. Councilmember Sarah Murray seconded the motion and a unanimous vote to approve was recorded.

7. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE PROVIDING FOR THE CLOSURE OF THE FOLLOWING STREET SEGMENT, TO WIT: A CERTAIN PORTION OF E. KERR AVENUE BOUNDED BY HOMER BOULEVARD AND MONTROSE STREET IN THE CITY OF LUFKIN; PROVIDING FOR THE TERMS AND CONDITIONS OF ABANDONMENT, VACATION AND CLOSURE; AND PROVIDING FOR THE CITY MANAGER TO EXECUTE A QUIT CLAIM DEED TO THE ABUTTING PROPERTY OWNER – APPROVED.

Mayor Bob Brown stated the next item was to conduct a Public Hearing and consider on second reading an Ordinance providing for the closure of the following street segment, to wit: a certain portion of E. Kerr Avenue bounded by Homer Boulevard and Montrose Street in the City of Lufkin; providing for the terms and conditions of abandonment, vacation and closure; and providing for the City Manager to execute a quit claim deed to the abutting property owner.

City Manager Paul Parker stated this was the second reading of the request from Calvary Baptist Church to close Kerr Street between Montrose Street and Homer Boulevard. City Manager Parker stated as City Council was aware, this was the portion of the street that ran between the sanctuary of the church and the multipurpose building, which were connected by a covered walkway. City Manager Parker stated that the traffic count on this street was extremely low on this portion of the street. City Manager Parker continued that the Church had agreed to purchase the street for the appraised value plus the appraisal cost in the amount of seven thousand seven hundred ninety dollars (\$7,790). City Manager Parker concluded that Staff recommended City Council approve the closure of the street and the sale of the property to Calvary Baptist Church.

Mayor Brown opened the Public Hearing at 5:08 p.m. and requested that anyone who wished to speak on the item to please step forward. There being no one further who wished to speak, Mayor Brown closed the Public Hearing and asked for comments or questions from City Council.

Councilmember Lynn Torres questioned how the church would indicate that the street was closed and prohibit thru traffic. Deputy City Manager Keith Wright stated that he had not spoken to the Pastor regarding this issue; however, he felt that there would be signage indicating that it was private property of the church. Deputy City Manager Wright continued that Staff would work with the Church to ensure that the issue was addressed.

Councilmember Lynn Torres moved to approve an Ordinance providing for the closure of the following street segment, to wit: a certain portion of E. Kerr Avenue bounded by Homer Boulevard and Montrose Street in the City of Lufkin; providing for the terms and conditions of abandonment, vacation and closure; and providing for the City Manager to execute a quit claim deed to the abutting property owner. Councilmember Robert Shankle seconded the motion and unanimous vote to approve was recorded.

NEW BUSINESS:

8. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LUFKIN, TEXAS GRANTING A SPECIAL USE PERMIT FOR A DRINKING ESTABLISHMENT IN A “CENTRAL BUSINESS” DISTRICT FOR A TRACT OF LAND DESCRIBED AS CITY OF LUFKIN, BLOCK 5, LOT 6 AND MORE COMMONLY KNOWN AS 113 WEST SHEPHERD AVENUE – APPROVED.

Mayor Bob Brown stated that the next item was to conduct a Public Hearing and consider on first reading an Ordinance amending the Zoning Ordinance of the City of Lufkin, Texas granting a Special Use Permit for a drinking establishment in a “Central Business” district for a tract of land described as City of Lufkin, Block 5, Lot 6 and more commonly known as 113 West Shepherd Avenue.

City Manager Paul Parker stated that a request from Mr. Jeremy Crew had been received for a Special Use Permit for a drinking establishment at 113 West Shepherd Avenue. City Manager Parker stated the owner wished to use the facility as a brewery for craft beer. City Manager Parker stated that there were two (2) storefront churches located in the area; however, both were located more than the required three hundred feet (300’) distance from the establishment. City Manager Parker also reminded Council that the issue of storefront churches related to zoning would need to be addressed in the future. City Manager Parker stated that the Planning & Zoning Commission recommended approval of the request. Mayor Brown confirmed that there was no opposition to the request. City Manager Parker stated that was correct; there was no opposition to the request.

Mayor Brown opened the Public Hearing at 5:11 p.m. and requested that anyone who wished to speak on the item to please step forward. There being no one further who wished to speak, Mayor Brown closed the Public Hearing and asked for comments or questions from City Council.

Councilmember Victor Travis questioned whether beer would be sold to the public from this establishment. Mr. Jeremy Crew, owner, stated that this would be a small craft brewery and per Texas Law, the beer would be sold to a distributor, who would sell to a retailer, who would then sell the product to the public. Mr. Crew stated it was unlawful for the brewery to sell to the public and there were no plans to sell to the public, only sampling and tours of the facility. Mr. Crew stated that touring of these facilities was a booming business. Councilmember Travis asked if there was a limit on the volume of beer that could be produced. Mr. Crew stated there was no limit; however, the size of the equipment would limit the production, and their production capacity would be small; approximately one hundred twenty-five (125) gallons per batch. Councilmember Duncan asked what the time frame for the opening facility would be. Mr. Crew stated that once the Special Use Permit was granted, he would then have to secure a federal bond and notice and then apply for a brewers permit through the Texas Alcohol Beverage Commission. Mr. Crew stated that hopefully it would be completed by the end of 2013.

Councilmember Victor Travis moved to approve an ordinance amending the Zoning Ordinance of the City of Lufkin, Texas granting a Special Use Permit for a drinking establishment in a "Central Business" district for a tract of land described as City of Lufkin, Block 5, Lot 6 and more commonly known as 113 West Shepherd Avenue. Councilmember Don Langston seconded the motion and a unanimous vote to approve was recorded.

9. ACCEPTANCE OF A GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE, INTERNET CRIMES AGAINST CHILDREN TASK FORCE PROGRAM TO THE LUFKIN POLICE DEPARTMENT IN THE AMOUNT OF EIGHTEEN THOUSAND NINE HUNDRED FIFTY-SIX DOLLARS (\$18,956); A MEMORANDUM OF UNDERSTANDING BETWEEN THE LUFKIN POLICE DEPARTMENT AND OFFICE OF THE ATTORNEY GENERAL FOR THESE GRANT ACTIVITIES AND A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2012/2013 OPERATING BUDGET (BUDGET AMENDMENT NO. 14), PROVIDING FOR THE SUPPLEMENTAL APPROPRIATION OF FUNDS IN THE GENERAL FUND AND PROVIDING AN EFFECTIVE DATE - APPROVED.

Mayor Bob Brown stated the next item was to Consider acceptance of a grant from the United States Department of Justice, Internet Crimes Against Children Task Force Program to the Lufkin Police Department in the amount of eighteen thousand nine hundred fifty-six dollars (\$18,956); approval of a Memorandum of Understanding between the Lufkin Police Department and Office of the Attorney General for these grant activities and approval of Resolution authorizing an amendment to the 2012/2013 Operating Budget (Budget Amendment No. 14), providing for the supplemental appropriation of funds in the General Fund and providing an effective date.

City Manager Paul Parker stated the Lufkin Police Department had received a grant in the amount of eighteen thousand nine hundred fifty-six dollars (\$18,956), with no required match from the Internet Crimes Against Children Task Force Program. City Manager Parker stated these funds would be used for software updates and training for investigators. City Manager Parker concluded that Staff recommended approval of the acceptance of the grant and Budget Amendment No. 14.

Councilmember Lynn Torres thanked the Police Department for securing the grant and moved to approve the acceptance of a grant from the United States Department of Justice, Internet Crimes Against Children Task Force Program to the Lufkin Police Department in the amount of eighteen thousand nine hundred fifty-six dollars (\$18,956); a Memorandum of Understanding between the Lufkin Police Department and Office of the Attorney General for these grant activities and a Resolution authorizing an amendment to the 2012/2013 Operating Budget (Budget Amendment No. 14), providing for the supplemental appropriation of funds in the General Fund and providing an effective date. Councilmember Victor Travis seconded the motion and a unanimous vote to approve was recorded.

10. DISCUSSION OF A PROPOSED ORDINANCE AMENDING THE STANDARD UNSAFE BUILDING ABATEMENT CODE FOR THE CITY OF LUFKIN, REPEALING ALL ORDINANCES AND PROVISIONS IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE -

Mayor Bob Brown stated the next item was to hold a discussion regarding a proposed ordinance amending the Standard Unsafe Building Abatement Code for the City of Lufkin, repealing all ordinances and provisions in conflict therewith; and providing for an effective date.

City Manager Paul Parker stated that the City of Lufkin had always been very aggressive in the removal of dilapidated homes and buildings. City Manager Parker stated that in the past, once all proper notices were issued, the Board of Adjustments and Appeals would rule on the case, and then City Council would also approve the action. City Manager Parker continued that once this was completed and no appeals were filed by the owner, the City Street Department would then demolish the structure and bill the owner. City Manager Parker furthered that if the owner did not pay for the cost of the demolition and clean up; the City would place a lien on the property for the amount of the demolition. City Manager Parker continued that most of these costs were never paid; however, the dilapidated structure would be removed, thus eliminating the hazard to the public. City Manager Parker furthered that a ruling on a recent lawsuit against the City of Dallas had halted this practice not only in the City of Lufkin, but in the majority of Texas cities. City Manager Parker then asked City Attorney Bruce Green to provide a summation of the case and proposed Ordinance. City Attorney Bruce Green stated that the procedure used by the City of Lufkin and other Texas cities to remove dilapidated structures had worked well in the past. City Attorney Green continued that prior to the ruling on the *Stewart* case; the court would give deference to the findings of a lay board, such as the Board of Adjustments and Appeals or the City Council. City Attorney Green gave an overview of the case, *Stewart v. the City of Dallas* that occurred in 2010. City Attorney Green explained that the City of Dallas condemned the property and began to take action. City Attorney Green furthered that during this procedure, one of the owners of the property filed an appeal; however the City of Dallas demolished the property during the appeal process. City Attorney Green stated that the District Court found that the City of Dallas had acted properly, but an additional claim of an unconstitutional taking of the property was filed. City Attorney Green furthered that under the Texas Constitution, the City of Dallas committed an unconstitutional taking by demolishing the property and not providing compensation to the owner. City Attorney Green continued that this was upheld by the Appellate Court and the Supreme Court. City Attorney Green stated that this ruling meant that cities could no longer make these rulings with a lay board, such as a City Council, without incurring the possibility of a filing of an unconstitutional taking because the Court would not give deference to these decisions and the case would have to be tried *de novo*, or from the beginning. City Attorney Green stated this has led to great concern by cities due to the statute of limitations being ten (10) years on takings claims, which makes the possibility of a city being filed against for previous demolitions. City Attorney Green stated that during the period of the rehearing of *Stewart v. the City of Dallas*, cities halted all condemnations and demolitions. City Attorney Green stated that the case went back to the Supreme Court and the court ruled the same; however, they included a provision that allowed condemnation and demolition proceedings to be heard by a lay board, and unless an appeal is made within thirty (30) days, the demolition could proceed with very little possibility of a takings claim being filed. City Attorney Green stated that cities could either now take the cases to District Court or use a different procedure as outlined in the proposed ordinance. City Attorney Green stated this ordinance tracked the outcome of *Stewart v. the City of Dallas*, and provided a very detailed procedure and created a commission to rule on condemnation and demolition proceedings. City Attorney Green stated that the Inspection Services Department will follow procedure, the Commission will rule on the case and a thirty (30) day waiting period will follow before demolition proceeds. City Attorney Green stated that this process will provide a safety net against takings claims; however, should the City be filed against, the City will most likely prevail. City Attorney Green stated that a summary of the ordinance provisions had been provided and noted that a commission would be created to hear these cases comprised of City Councilmembers. Councilmember Don Langston questioned what the vote requirement of the commission would be. City Attorney Green stated the Ordinance required four (4) votes, regardless of the number of members on the Commission. City Manager Parker stated he would recommend that the entire City Council sit on the Commission and the meetings be held immediately following a regular Council meeting as separate posted meeting. City Manager Parker stated that this would allow for the meeting to be recorded and videoed for further protection. City Attorney Green stated that the Ordinance did not reference the building codes; it outlined every procedure and step, in order to prevent future claims. Councilmember Langston stated that he felt this would help to protect individual property owner's rights and would at least provide the opportunity for an owner to appeal. City Manager Parker asked if the City Council would prefer to have four (4) members or the entire City Council on the Commission. City Council concurred that they would prefer to include all of City Council on the Commission. City Manager Parker stated that the Ordinance would be placed on the next Council Agenda for consideration and that no action was necessary on the item at this time.

11. CITY MANAGER REPORT

City Manager Paul Parker thanked Deputy City Manager Wright and all Department Heads for their efforts during his absence. City Manager highlighted the Financial Reports and the Project Status Report and stated he would be glad to answer any questions City Council may have regarding the reports. City Manager Parker then asked Police Chief Scott Marcotte to introduce the new Animal Control Director, Aaron Ramsey. Chief Marcotte introduced Mr. Ramsey and highlighted his education and career achievements and stated the City was pleased to have him. Mr. Ramsey stated he was honored to be working for the City of Lufkin.

12. EXECUTIVE SESSION

Mayor Bob Brown stated there would be no need for City Council to enter into Executive Session.

13. DISCUSSION OF ITEMS OF COMMUNITY INTEREST, INCLUDING EXPRESSIONS OF THANKS, CONGRATULATIONS OR CONDOLENCE; INFORMATION REGARDING HOLIDAY SCHEDULES; HONORARY RECOGNITIONS OF CITY OFFICIALS, EMPLOYEES OR OTHER CITIZENS; REMINDERS ABOUT UPCOMING EVENTS SPONSORED BY THE CITY OR OTHER ENTITY THAT IS SCHEDULED TO BE ATTENDED BY CITY OFFICIALS OR EMPLOYEES; AND ANNOUNCEMENTS INVOLVING IMMINENT THREATS TO THE PUBLIC HEALTH AND SAFETY OF THE CITY.

City Manager Paul Parker reviewed the upcoming events and meetings on the City Council calendar. Councilmember Lynn Torres reminded City Council of the retirement reception for retiring Lufkin Independent School District superintendent Roy Knight and the welcome reception for the new Superintendent. Mayor Bob Brown stated the Angelina Benefit Rodeo would begin next week.

14. There being no further business for consideration, the meeting adjourned at 5:47 p.m.



Bob F. Brown, Mayor



Kara Atwood, City Secretary

SEAL