

**MINUTES  
REGULAR COUNCIL MEETING  
APRIL 23, 2013**

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:

Bill Houston	§	Mayor	
Mike Rodgers	§	Councilmember Place 2	@ 6:00 p.m.
Jason Kyle	§	Councilmember Place 3	
Joe Frizzell	§	Mayor Pro Tem Place 4	@ 6:00 p.m.
T. J. Henley	§	Councilmember Place 5	
Ted Miller	§	Councilmember Place 6	

*Absent: Wayne Sibley due to family vacation*

**WORK SESSION AGENDA - 5:00 p.m.**

**2013-131 CONSIDER AND DISCUSS PROPOSED MOSQUITO MANAGEMENT PROGRAM**

Mayor Houston called the work session to order at 5:10 p.m. Council reviewed and discussed the West Nile Virus response plan and integrated mosquito management program for the 2013 West Nile Virus season.

**REGULAR AGENDA – 6:00 p.m.**

Mayor Houston called the meeting to order at 6:02 p.m. with notice of the meeting duly posted and a quorum present. Councilmember Kyle gave the invocation and led in the pledges.

**2013-132 ANNOUNCEMENTS/PRESENTATIONS**

**a. Community Affairs calendar**

**April 27** 12 p.m. – 9 p.m. Spring Fling & 125<sup>th</sup> Birthday Bash (5K4Kids, Arts & Crafts Fair, Cupcakes, Car Show & 8<sup>th</sup> Street Dance.)

**May 4** 9 a.m.-11 a.m. Hazardous Household Waste Collection at Public Works Service Center

**April 29 - May 3** Early Voting at the Midlothian Conference Center 8 a.m.-5 p.m.

**May 6 - May 7** Early Voting at the Midlothian Conference Center 7 a.m.-7 p.m.

**May 11** Election Day - Voting at the Midlothian Conference Center 7 a.m. – 7 p.m.

Representatives of the Midlothian Area Historical Society presented Mayor Houston with a check to the City representing proceeds from Larkin Newton log cabin tours.

**b. Administrative announcements related to personnel**

None were received.

**c. Proclamation recognizing May as Motorcycle Safety Month**

Mayor Houston presented the proclamation to representatives of various local area motorcycle clubs.

**d. Proclamation recognizing May as National Physical Fitness and Sports month**

Mayor Houston presented the proclamation to Human Resources Director Janet Goad.

**e. Water Treatment Plant employee recognition**

Don Hastings expressed congratulations to Water Treatment Plant staff Cynthia Ford and Sandra Binkley on their recent win at the Top Ops state-wide competition and presented them with the Top Ops trophy. Ms. Ford and Ms. Binkley will compete in the national competition to be held during the American Water Works Association annual conference on June 10 and 11 in Denver, Colorado. Mr. Hastings also congratulated Ms. Ford and Ms. Binkley on their attainment of the Class A Water Operator License through the Texas Commission on Environmental Quality.

**f. Oath of Honor to incoming Police Department personnel**

Police Chief Carl Smith administered the Oath of Honor to recently hired police officers Amber Boyd, Heather Phares, Thomas Pickett and Jeff Thaxton.

**2013-133 CITIZENS TO BE HEARD**

None to be heard.

**2013-134 CONSIDER AND ACT UPON A RADAR HOST SITE AGREEMENT WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENT (NCTCOG) TO FACILITATE THE INSTALLATION OF A CASA WX RADAR FACILITY IN MIDLOTHIAN AT A DIRECT COST TO THE CITY NOT TO EXCEED \$40,000**

Mayor pro tem Frizzell presented the Item and a brief video summarizing the scope of the project was shown to those in attendance. Meteorologist Rebecca Miller of KDFW – Channel 11 and Amanda Everly of NCTCOG answered Council questions regarding the radar’s capabilities. Adam Mergener reported on the support that local industry has provided in helping with the installation of the radar unit, which has minimized costs tremendously. Mayor pro tem Frizzell moved to approve Item 2013-134 as presented. Motion was seconded by Councilmember Henley and carried unanimously (6-0).

<b>CONSENT AGENDA</b>
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**2013-135 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETING OF APRIL 9, 2013**

**2013-136 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE SECOND ANNUAL MIDTOWNE BLOCK PARTY, LOCATED AND HOSTED BY PROPERTY OWNERS IN A SECTION OF MIDTOWNE, SCHEDULED FOR SATURDAY, APRIL 27, 2013, 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. RES12-2012-55)**

**2013-137 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE ANNUAL “HEAD FOR THE HILLS” BICYCLE RALLY ROUTED THROUGH THE CITY OF MIDLOTHIAN AND HOSTED BY THE CEDAR HILL ROTARY CLUB ON SATURDAY, MAY 11, 2013, IN ACCORDANCE WITH ZONING REQUIREMENTS FOR THIS TYPE OF EVENT AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 89-13, AS AMENDED, SECTION 4.4 (CASE NO. RES11-2012-54)**

At the request of Councilmember Kyle, Item 2013-137 was moved to the Regular Agenda. Councilmember Kyle moved to approve the Consent Agenda as presented. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (6-0).

<b>REGULAR AGENDA</b>
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- 2013-137 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE ANNUAL "HEAD FOR THE HILLS" BICYCLE RALLY ROUTED THROUGH THE CITY OF MIDLOTHIAN AND HOSTED BY THE CEDAR HILL ROTARY CLUB ON SATURDAY, MAY 11, 2013, IN ACCORDANCE WITH ZONING REQUIREMENTS FOR THIS TYPE OF EVENT AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 89-13, AS AMENDED, SECTION 4.4 (CASE NO. RES11-2012-54)**

Councilmember Kyle expressed concern regarding potential traffic issues around the Conference Center due to the event being held on the same day as the municipal and school district elections. Chief Smith reported that the Police Department was aware and ready to handle any traffic problems. Councilmember Kyle moved to approve Item 2013-137 as presented. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (6-0).

<b>PUBLIC HEARINGS</b>
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- 2013-138 CONDUCT A PUBLIC HEARING AND ACT UPON A REQUEST FOR AN ORDINANCE TO ALLOW A MINOR AUTOMOTIVE REPAIR GARAGE AT 418 W. MAIN STREET. PROPERTY IS ZONED COMMERCIAL (C) DISTRICT, CONTAINING ± 0.158 ACRES, AND GENERALLY LOCATED AT THE SOUTHEAST INTERSECTION OF W. MAIN ST. AND S. 5<sup>TH</sup> STREET, IN THE CITY OF MIDLOTHIAN, TEXAS (SUP03-2012-41)**

Mayor Houston opened the Public Hearing and John Taylor presented the Item which was denied by the Planning and Zoning Commission on March 19, 2013. After discussion by Council, Mayor pro tem Frizzell moved to close the public hearing. Motion was seconded by Councilmember Kyle and carried unanimously (6-0). Councilmember Kyle moved to deny Item 2013-138 as presented. Motion was seconded by Councilmember Henley and carried unanimously (6-0).

- 2013-139 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE TO REZONE ± 1,167.375 ACRES FROM THE CURRENT AGRICULTURAL (A) DISTRICT TO A PLANNED DEVELOPMENT DISTRICT (PD) FOR RESIDENTIAL USES (*SINGLE-FAMILY, TOWNHOMES AND MULTI-FAMILY*) NON-RESIDENTIAL USES (*COMMERCIAL AND LIGHT INDUSTRIAL*) AND OPEN SPACES. PROPERTY ENCOMPASSES TWO (2) TRACTS: THE NORTH TRACT CONTAINS ± 966.36 ACRES AND GENERALLY LOCATED NORTH OF US HWY. 287 AND EAST OF WALNUT GROVE ROAD AND THE SOUTH TRACT CONTAINS ± 201.01 ACRES GENERALLY LOCATED SOUTH OF THE SOUTHERN PACIFIC RAILROAD AND EAST AND SOUTHEAST OF PLAINVIEW ROAD IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z05-2012-27)**

Mayor Houston opened the Public Hearing which was continued from the March 26 Council meeting. John Taylor gave a brief recap of the project. Matt Alexander of ECOM Properties gave a presentation regarding the design standards as set out in the Diamond J Development Design Book. Blake Norwood, 850 S. Walnut Grove Road and Jim Duerstler addressed Council regarding their opposition to the project and the potential effect it will have on their adjacent property. Councilmember Henley moved to continue the Public Hearing to the May 14, 2013 Council meeting. Motion was seconded by Ted Miller and carried unanimously (6-0).

<b>REGULAR AGENDA</b>
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**2013-140 CONSIDER AND ACT UPON AUTHORIZING THE FILTER CONSOLE PROGRAMMABLE LOGIC CONTROLLER (PLC) UPGRADE AT THE TAYMAN WATER TREATMENT PLANT WITH XYLEM WATER SOLUTIONS USA, INC., SAID UPGRADE IS TO BE ACCOMPLISHED IN TWO PHASES, WITH PHASE 1 AND PHASE 2 IN THE AMOUNTS OF \$41,000 AND \$46,300, RESPECTIVELY, FOR A TOTAL NOT TO EXCEED AMOUNT OF \$87,300**

Ben Wilson presented the Item to Council explaining the need to update and replace the existing units at the Tayman facility. Councilmember Kyle moved to approve Item 2013-140 as presented. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (6-0).

**2013-141 CONSIDER AND ACT UPON CHANGE ORDER NUMBER TWO FOR THE FM 1387 - HIGH SCHOOL NO. 2 WATER LINE RELOCATION AND SANITARY SEWER PROJECT WITH CIRCLE H CONTRACTORS, L.P. IN AN AMOUNT NOT TO EXCEED \$186,990.50, SAID CHANGE ORDER IS FOR THE RELOCATION OF EXISTING CITY WATER LINES AS PART OF THE FM 663 BRIDGE EXPANSION PROJECT**

Mike Adams presented the change order explaining that the Midlothian Development Authority has agreed to fund the remaining balance needed to finish the FM663 Bridge Project. The contractor, Circle H Contractors is currently performing the same scope of work on the FM1387/Walnut Grove Road Project and has agreed to add the FM663 Project to the FM1387 Project contract as a change order and hold their existing unit pricing, resulting in a cost savings for the City. Councilmember Henley moved to approve Item 2013-141 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (6-0).

**2013-142 CONSIDER AND ACT UPON AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF MIDLOTHIAN, TEXAS GENERAL OBLIGATION BONDS, SERIES 2013, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$7,800,000; AND ORDAINING OTHER MATTERS RELATED THERETO, INCLUDING IMMEDIATE EFFECTIVENESS**

Chris Dick presented the Item reporting that bids were received for the General Obligation bonds. Financial advisor, Mark McLiney of Southwest Securities addressed Council and presented the rating agency report and bid tabulation sheet showing six bids received to Council. Mr. McLiney reported that the City received a very favorable rating report from the rating agency. Councilmember Kyle moved to approve Item 2013-142 as presented. Motion was seconded by Councilmember Henley and carried unanimously (6-0).

**2013-143 CONSIDER AND ACT UPON A CONSTRUCTION CONTRACT BETWEEN THE CITY OF MIDLOTHIAN AND KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS COMPANY, FOR THE CONSTRUCTION OF A 48 X 48 STEEL FRAME HEXAGONAL PAVILION (ROOF DECKING ONLY, WITH THE ROOF TO BE INSTALLED BY A DIFFERENT CONTRACTOR), IN AN AMOUNT NOT TO EXCEED \$60,939.42**

Billy King presented the Item for the construction of a pavilion in Kimmel Park. Councilmember Miller moved to approve Item 2013-143 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (6-0).

**2013-144 CONSIDER AND ACT UPON THE USE OF CONTRACTUAL INSTRUCTORS BY THE CITY OF MIDLOTHIAN PARKS AND RECREATION DEPARTMENT, ESTABLISHING THE GENERAL GUIDELINES, FEE SCHEDULE AND INSTRUCTOR CONTRACT AGREEMENT**

The Item will be taken up at a later meeting.

**2013-145 CONSIDER AND ACT UPON AWARDING A CONTRACT WITH GAW CONSTRUCTION SERVICES, LLC FOR THE SPORTS PARK IMPROVEMENT PROJECT IN THE AMOUNT OF \$165,264 PLUS 5% CONTINGENCY FOR A TOTAL AMOUNT NOT TO EXCEED \$173,527. THE CONTRACT AMOUNT INCLUDES THE ORIGINAL BID OF \$154,864 PLUS \$10,400 FOR ADDITIONAL IMPROVEMENTS BASED ON UNIT PRICING**

Billy King presented the Item for additional parking surfaces and sidewalks at the Joint Sports Park facility, noting that MISD has agreed to pay one-half of the cost. Mayor pro tem Frizzell moved to approve Item 2013-145 as presented. Motion was seconded by Councilmember Miller and carried unanimously (6-0).

**2013-146 CONSIDER AND ACT UPON A CONTRACT BETWEEN THE CITY OF MIDLOTHIAN AND VDCI (VECTOR DISEASE CONTROL INTERNATIONAL), FOR AN ALL-INCLUSIVE, INTEGRATED MOSQUITO MANAGEMENT AND MOSQUITO ABATEMENT PROGRAM**

Code Enforcement Officer Debbie Lubke presented the Item for mosquito management and control. City Attorney Don Stout recommended that a venue provision be added to the proposed contract. Mayor Houston moved to approve Item 2013-146 as presented, subject to a venue provision being included in the final contract. Motion was seconded by Councilmember Kyle and carried unanimously (6-0).

**2013-147 RECEIVE AN UPDATE ON VARIOUS CITY BOARD AND COMMISSION MEETINGS AND ACTIVITIES**

None were received.

*Council moved to Executive Session at 8:59 p.m. for the purpose of discussing Items 1, 2, 4 and 5 with the following present: Mayor Houston, Mayor pro tem Frizzell, Councilmembers Rodgers, Kyle, Henley, Miller; City Manager, City Attorney and Midlothian Economic Development President Larry Barnett.*

**EXECUTIVE SESSION**

- 1. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 3-07-CV-1351-N, TEXAS CENTRAL BUSINESS LINES CORPORATION V. CITY OF MIDLOTHIAN
- 2. SECTION 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS
- 3. SECTION 551.072 REAL ESTATE: DELIBERATE AND CONSIDER THE ACQUISITION OF REAL PROPERTY AND EASEMENTS
- 4. 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.
- 5. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY BASED ON AN ETHICAL DUTY TO ADVISE REGARDING POTENTIAL LITIGATION

*Council reconvened in Regular Session at 9:55 p.m. with no action taken in Executive Session.*

**REGULAR AGENDA**

**2013-148 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: TEXAS CENTRAL BUSINESS LINES**

No action was taken following Executive Session.

**2013-149 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: ECONOMIC DEVELOPMENT**

MED President Larry Barnett participated in Executive Session; no action was taken.

**2013-150 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: REAL ESTATE**

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

**2013-151 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: ECOM**

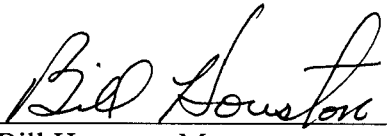
No action was taken following Executive Session.

**2013-152 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: CONTEMPLATED LITIGATION**

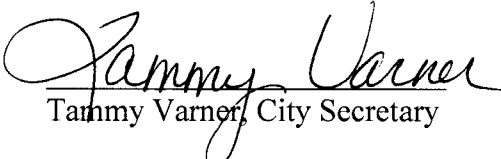
No action was taken following Executive Session.

**2013-153 ADJOURN**

With there being no further business to discuss, Mayor Houston adjourned the meeting at 9:55 p.m.

  
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Bill Houston, Mayor

ATTEST:

  
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Tammy Varner, City Secretary