

Duncanville City Council Meeting Minutes

Regular Meeting

Tuesday, October 19, 2021

CALL TO ORDER

A regular meeting of the Duncanville City Council was called to order on Tuesday, October 19, 2021, at 6:00 p.m. in the Council Briefing Room at City Hall with a quorum to wit:

COUNCIL PRESENT: Mayor Barry L. Gordon
Mayor Pro Tem Patrick Harvey
Councilmember Joe Veracruz
Councilmember Don McBurnett
Councilmember Jeremy Koontz
Councilmember Greg Contreras

COUNCIL ARRIVING AT: Councilmember Mark D. Cooks – 6:20 p.m.

SUPPLEMENTAL NOTICE OF MEETING BY VIDEO CONFERENCE

In accordance with an Order of the Office of the Governor issued on March 16, 2020, as extended, the City Council for the City of Duncanville, Texas will conduct a City Council Regular Meeting in person and by video conference at 6:00 pm on Tuesday, October 19, 2021, in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) in an effort to slow the spread of the Coronavirus (COVID-19) pandemic.

This is an open meeting conducted by in person and video conference.

Due to limited seating in council chambers, persons or participants may attend by video conference in order to maintain safe social distance as provided in this notice.

To speak by video conference during Citizen Comments, you must register with the City Secretary before 4pm on Tuesday, October 19, 2021, email citysecretary@duncanville.com and title the email “Public Comment – May 18th. You will need to register with the link below and attend the meeting by video conference. During the Citizen Comments period of the agenda, the City Secretary will call your name and allow attendance in person access to your camera and microphone for you to provide your comments. Feel free to email your comment to the City Secretary for the Mayor to read into the record for any unexpected technological issues that may arise or unable to attend in person.

Register in advance for this webinar:

https://us02web.zoom.us/webinar/register/WN_LZGmT_AYQxuPcHXv4GtYrw

After registering, you will receive a confirmation email containing information about joining the webinar.

A recording of the video meeting will be made available to the public in accordance with the Open Meetings Act upon written request.

I. WORK SESSION / BRIEFING

I.1. DISCUSS AGENDA ITEMS

Mayor Gordon read the item into record, and City Manager Ferrell-Benavides reviewed each item. Item 4B - adopting the Texas Term Sheet and its Intrastate Allocation Schedule regarding the Global Opioid Settlement. The Texas Attorney General's Office sued Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson for manufacturing and distributing opioids. They have reached a settlement that provides payments to the City for opioid abatement. The City has been allocated \$58,328.00. The funds that the City receives must be used to support a wide variety of strategies to fight the opioid crisis. This settlement does not affect the multidistrict litigation or claims made against Mallinkrodt or Purdue Pharma, as those are still ongoing. The amounts allocated to the City are not subject to negotiation. However, additional funds may be received through the Health Care Region Allocation. There will be grants for which the City can apply to obtain additional funds for opioid abatement. Item 4C - authorizing the purchase of Rubrik backup hardware and software from CDW Government through Promark GSA Contract Schedule GS-35F-303DA in the amount of \$84,795.00. We currently utilize Rubrik for data backups, and the hardware device has reached the end of life and end of support. This purchase will move us to a subscription-based plan that includes evergreen hardware wherein the hardware used to power our data backup solution is replaced every three years free of charge. We currently budget annually for maintenance and support of our Rubrik device. The subscription plan will change this

from an annual budgeted item to every three years and be included in the IT replacement fund.

I.2. BRIEFINGS / PRESENTATIONS

I.2.A. *Consider and deliberate whether or not to direct the Economic Development Corporation to initiate an online community survey of open green space and suggestions for the use and development of the Charles F. Ladd property or other undeveloped municipal real property.*

Item requested by Councilmember Koontz.

Economic Development Director Garcia spoke on the proposed survey language.

1. Regarding the City-owned Ladd Property at 609 W Danieldale Road, are you in favor, opposed, or indifferent to commercial or residential development?
2. Generally, are you in favor, opposed, or indifferent to commercial or residential development of undeveloped green spaces owned by the City of Duncanville?
3. On a scale of 1 to 10 (1 being not important at all, 10 being major priority), how important is it to you that the City of Duncanville preserves undeveloped green spaces?
4. Are you in favor, opposed, or indifferent to a Nature Preserve located in the City of Duncanville?
5. Have you, in the last 12 months, visited a park or nature preserve outside the City of Duncanville? Name of park/preserve? What City? Did you shop, eat, or make other purchases while visiting this City?
6. Please provide other thoughts you may have on the use of undeveloped green spaces owned by the City of Duncanville.

Mayor Gordon voiced his concerns on the survey and felt a professional service should write the survey questions and reference the 42 acres gifted to the City.

Several Councilmember voiced their concerns on the financial impact to the citizens to maintain the property and turn the property into a park.

Councilmember McBurnett suggested a more in-depth discussion on the property at the Council Retreat.

Councilmember Koontz voiced his support in turning the Ladd property into a nature preserve and exploring opportunities.

Councilmember McBurnett asked the City Attorney if citizens walking around the property would cause a liability to the City.

City Attorney Hager stated the property is City-owned property; unless you know of a known danger, you have to warn of a known danger and do not have a duty to make safe. But there is liability attached. If the property were a designated park, you have the protection of the Texas Parks and Wildlife Code which allows immunity for the use of the park.

City Council concluded to have a professional assessment for the best use of the property and to hear from the citizens.

City Attorney Hager suggested staff post signs to enter at own risk from a liability standpoint. The Ladd property is not a park; it is a property the City owns.

City Manager Ferrell-Benavides stated staff would work on the survey questions. The Economic Development Department would look into three concepts and then provide those options to Council. After Council review, staff would then bring those concepts to the Citizens.

- I.2.B. ***Receive a presentation on the City of Duncanville’s current “loud and raucous noise” ordinance (Ordinance 1794 § 1), relating to citizen quality of life, and obtain direction for the possibility of revamping or amending the ordinance in the future.***

Interim Police Chief LiVigni presented the item.

Best Southwest City “Noise” Ordinances

City of Duncanville – Loud and Raucous Noise (Article I., Sec. 12-3)

- Offensive to a reasonable person of normal sensibility
- Provides some examples but list is not all-inclusive
 - o Specifically makes a prohibition from 10:00 p.m. – 7:00 a.m.

City of Cedar Hill – Loud Noises Prohibited (Article II., Sec. 14-21)

- Offensive to a reasonable person of normal sensibility
- Provides some examples but list is not all-inclusive
 - o Specifically makes a prohibition from 11:00 p.m. – 6:00 a.m.

City of DeSoto – Noise Nuisances (Article 8.400)

- Offensive to ordinary sensibilities of the inhabitants of the city
- Provides more extensive list but is not all-inclusive
 - o Provides specific time prohibitions tied to weekdays and each weekend day
- Provides for defenses to prosecution

City of Lancaster – Noise (Article 14.04)

- Offensive to a reasonable person of normal sensibility
- Provides some examples but list is not all-inclusive
 - o Specifically makes a prohibition from 10:00 p.m. – 6:00 a.m.

Texas Penal Code 42.01 – Disorderly Conduct

42.01(c) For purposes of this section:

- an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; and
- (2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 (specifically objective)
 - o after the person making the noise receives notice from a
 - magistrate or peace officer that the noise is a public nuisance

Decibel readers should be calibrated.

Objective Reasonableness Standard

- Martinez v. State of Texas 323 S.W.3d 493 Tex. Crim. App. 2010 – “A judge must be afforded some discretionary authority to take into account the specific facts involved in a particular case and tailor the “reasonable requirements...”
- Considerations to applying subjectivity to court’s “Objective reasonableness standard.”
 - o Volume
 - o Time of day
 - o Type of noise
 - o Duration

Councilmember Contreras questioned if an Ordinance referred to specific Decibel levels would an application on the phone with an Officer work. City Attorney Hager stated it probably would not. Councilmember Contreras questioned where the decibel readings would be done at the origin of sound or where the complaint has come from. Interim Chief LiVigni and City Attorney Hager stated the reading would be from the property line.

City Attorney Hager and Interim Chief LiVigni stated we need help from citizens, and residents need to come to court and testify.

- I.2.C. Discussion on the usage of 103 E Wheatland Rd, Duncanville, TX 75116.**
It was moved until after Individual Consideration.

Executive Session was moved until after Staff and Board Reports.

Mayor Gordon recessed the Briefing Session at 6:58 p.m.

II. EXECUTIVE SESSION

Executive Session was moved until after Staff and Board Reports.

II.1 “City Council shall convene into closed executive session pursuant to Section 551.071 of Texas Government Code to seek legal advice from City Attorney regarding EMS Agreement by and between City of Dallas and City of Duncanville.”

II.2 “City Council shall convene into closed executive session pursuant to Section 551.074, Personnel Matters, of the Texas Government Code to discuss the appointment and process of a public officer or employee to wit: Police Chief.”

III. REGULAR SESSION - CONVENE INTO THE COUNCIL CHAMBERS (7:00 P.M. or immediately following the 6:00 pm Work Session/Briefing)

The City Council convened into Regular Session in the Council Chambers at 7:05 p.m. with Mayor Gordon presiding.

The Invocation was delivered by Rev. Dr. Ginger Hertenstein, First Presbyterian Church.

The Pledge of Allegiance and Texas Pledge were led by Mayor Gordon.

III.1. REPORTS

III.1.B. Councilmembers' Reports

Item was moved before the Mayor's Report.

Councilmember McBurnett spoke on the PIP Program and their hard work and commitment to the program.

Councilmember Cooks requested a moment of silence for General Colin Powell

Councilmember Contreras spoke on the PIP Program, and Betty Dunn's hard work and commitment.

III.1.A. Mayor's Report.

Recognition of City Champion.

Mayor Gordon encouraged everyone to attend:

Coffee with the Mayor

October 27, 2021

Senior Center

8:30 a.m.

Mayor Gordon recognized Allen Conley as a City Champion.

Mayor Gordon recognized the 139th Birthday of the City of Duncanville.

Mayor Gordon recessed Regular Session at 7:25 p.m.

Mayor Gordon reconvened Regular Session at 7:36 p.m.

III.1.C. City Manager's Report.

City Manager Ferrell-Benavides spoke on the following:

- The Police Department will hold a National Drug Take-Back event on Saturday, October 23, 2021, from 10:00 a.m. to 2:00 p.m., at the Duncanville Police Department located at 203 E. Wheatland Rd., Duncanville, Texas, 75116. Citizens are encouraged to bring in unused

or out-of-date medications for proper disposal. We will not take any needles or inhalers.

- The Recreation Center will be hosting the annual Boo Bash on Friday, October 29, 7:00 PM to 9:00 PM. The event is free and there will be lots of fun activities, costume contests, crafts, and candy for kids of all ages.

III.2. PROCLAMATIONS AND PRESENTATIONS

III.2.A. *Proclamation Recognizing October 2021 as Domestic Violence Awareness Month.*

Mayor Gordon read the proclamation.

III.2.B. *Proclamation recognizing October 2021 as National Community Planning Month.*

Councilmember Contreras read the proclamation.

III.3. CITIZENS' INPUT

“Pursuant to Section 551.007 of the Texas Gov’t Code, any member of the public has the opportunity to address the City Council concerning any matter of public business or any posted agenda item; however, the Act prohibits the City Council from deliberating any issues not on the public agenda and such non-agenda issues may be referred to City staff for research and any future action; all persons addressing are subject to council adopted rules and limitations permitted by law”

To address the Council, please submit a fully-completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting.

Mayor Gordon read the item into record. The following spoke during the Citizens Input Period:

Thomas Lackey – submitted a comment on the Ladd Property.

Alice Rodriguez – submitted a comment on the Ladd Property.

Hannah Olsen - submitted a comment on the Ladd Property.

Patricia Ebert - submitted a comment on the Ladd Property.

Mark Croysdale, 1215 Wellington Dr. – Spoke on the Ladd Property.

Judy Smithey, 1806 Cedar Hill Rd. - spoke on the selection of Chief of Police.

Grady Smithey, 1806 Cedar Hill Rd. – spoke on the selection of Chief of Police and a road project.

Gale Sliger, 1405 S. Main St. - spoke on the selection of Chief of Police.

Mark Graham, 410 Santa Fe Trail – spoke on the Ladd Property.

Erika Browning, 442 E. Cherry St – spoke on the selection of Chief of Police and the Ladd Property.

Stan Smith, 344 Fouts Ave – spoke on the selection of Chief of Police.

III.4. CONSENT AGENDA

Mayor Gordon requested that City Secretary Kristin Downs read the Consent Agenda Items.

III.4.A. *Consider the Minutes for the June 15, 2021, City Council Regular Meeting, June 22, 2021, City Council Special Meeting, June 29, 2021, City Council Budget Workshop, and the June 30, 2021, City Council Budget Workshop.*

- III.4.B. Consider a Resolution adopting the Texas Term Sheet and its Intrastate Allocation Schedule regarding the Global Opioid Settlement.**
- III.4.C. Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing a purchase of Rubrik backup hardware and software, from CDW Government through Promark GSA Contract Schedule GS-35F-303DA in the amount of \$84,795.00.**

Councilmember Don McBurnett made a motion to approve the item as stated, Councilmember Joe Veracruz seconded the motion. The vote was cast 7 for, 0 against. Items passed.

III.5. ITEMS FOR INDIVIDUAL CONSIDERATION

- III.5.A. Conduct a Public Hearing (2021-20) for consideration and action regarding the request of Jose Garcia, Applicant and Owner, to include a Specific Use Permit "SUP" to allow for the use of Truck Repair on Woodhaven, Block 2, Lot 3, approximately 0.92 acres, more commonly known as 410 E Red Bird Lane.**

City Planner Thibodeaux presented the item.

Request

- A Specific Use Permit "SUP" to allow for the use of Truck Repair on Woodhaven, Block 2, Lot 3, approximately 0.92 acres, more commonly known as 410 E. Red Bird Ln., Duncanville, Dallas County, Texas
- Jose Garcia, Owner, and Applicant

Project Scope

- Request to allow the use of Truck Repair
- The subject property is composed of an existing structure and parking area with a surrounding perimeter fence in the front along E. Red Bird Ln
- No site or structural modifications are proposed with this request
- Vehicle repair and service activity to take place inside an existing structure with the exterior parking area being used to stage vehicles in a queue for repair and/or service
- Potential outside storage will have to be screened per Section 4.07.C.6. (Outside Storage Screening) of the Zoning Ordinance. The existing fence can be modified to block views from the right-of-way

Planning & Zoning Recommendation

At the September 27, 2021, Planning & Zoning Commission Meeting, the Commission recommended approval subject to the following:

- Outside storage shall be in conformance with Section 4.07.C.6. (Outside Storage Screening) of the Zoning Ordinance.
- The SUP shall be required to be renewed five years after the adoption of the SUP Ordinance.

Note: staff recommends the renewal period be reduced to 2 years and, upon renewing, the SUP application fee be waived.

Mayor Gordon opened the Public Hearing at 8:10 p.m.

No one spoke.

Mayor Gordon read a text message he received on October 18, 2021, via text message from Frances Rizo in opposition to Industrial Businesses.

Councilmember Mark D. Cooks made a motion to close the Public Hearing, Councilmember Don McBurnett seconded the motion. The vote was cast 7 for, 0 against. Motion passed.

Mayor Gordon closed the Public Hearing at 8:13 p.m.

Council discussed possible tabling of the item and their reasons on why they would not be in favor of supporting the SUP.

Councilmember Don McBurnett made a motion to approve the item as stated, Councilmember Jeremey Koontz seconded the motion. The vote was cast 0 for, 7 against (Mayor Barry L. Gordon, Mayor Pro Tem Patrick Harvey, Councilmember Joe Veracruz, Councilmember Don McBurnett, Councilmember Jeremey Koontz, Councilmember Mark D. Cooks, and Councilmember Greg Contreras). Item denied.

III.5.B. *Consider a Resolution confirming the City Manager's appointment of Nigel Robinson as a member of the Duncanville Civil Service Commission for three (3) year term through October 31, 2024.*

City Manager Ferrell-Benavides presented the item.

Mayor Pro Tem Patrick Harvey made a motion to approve the item as stated, Councilmember Mark D. Cooks seconded the motion. The vote was cast 7 for, 0 against. Item passed.

III.5.C. *Take any necessary action as a result of the Executive Session.*

Item was moved until after Staff and Board Reports.

I.2.C. *Discussion on the usage of 103 E Wheatland Rd, Duncanville, TX 75116.*

City Manager Ferrell-Benavides presented the item.

III.6. STAFF AND BOARD REPORTS

III.6.A. *Receive the Police Department Quarterly Report.*

Interim Police Chief LiVigni presented the item.

III.6.B. *Receive the Fire Department Quarterly Report.*

Fire Chief Rohde presented the item.

III.6.C. *Receive the Monthly Financial Report as of August 31, 2021.*

Financial Services Managing Director Atmore presented the item.

Mayor Gordon recessed Regular Session at 9:53 p.m.

II. EXECUTIVE SESSION

The Executive Session was called into session at 10:01 p.m. and City Attorney Hager read the item into record.

II.1 *"City Council shall convene into closed executive session pursuant to Section 551.071 of Texas Government Code to seek legal advice from City Attorney regarding EMS Agreement by and between City of Dallas and City of Duncanville."*

II.2 *"City Council shall convene into closed executive session pursuant to Section 551.074, Personnel Matters, of the Texas Government Code to discuss the appointment and process of a public officer or employee to wit: Police Chief."*

The Council closed the Executive Session at 11:42 p.m.

Mayor Gordon reconvened Regular Session at 11:44 p.m.

III.5.C. *Take any necessary action as a result of the Executive Session.*

No action taken.

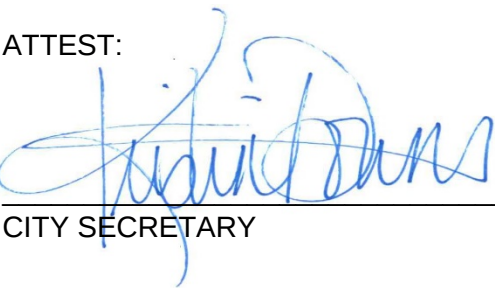
IV. ADJOURNMENT

The meeting was adjourned at 11:45 p.m.

APPROVED:


MAYOR

ATTEST:


CITY SECRETARY